HB

414

Frank H. Wasmer
P.O. Box 231
Skagway, Alaska 99840

907-983-2131

March 26,1990

Representative Peter Goll
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99840

Dear Peter,

Upon review of HB 414, I have reservations about its benefit to children. It seems to be a response to the Alaska Supreme Court decision of Alaska Catholic Children's Services Vs. Cook Inlet Native Association and others of December, 1989. In that decision it was held that The Indian Child Welfare Act does not apply to voluntary placements. This is consistent with the federal standard and provides for freedom of choice, a constitutional guarantee.

I have been more than curious for some time about implementation of ICWA in Alaska. The Division of Family and Youth Services have , in my opinion, applied a standard far beyond the intent of the law. There seems to be some confusion in both DFYS and the Attorney General's office about federal standards and how those standards should be met. Line workers have similar concerns but are reluctant to voice them for fear of being labeled "racist".

I see the bottom line as one defining some simple rights. People should be allowed the freedom to make their own choices and choose for their minor children regardless of race. I see no distinction between native, black, white or any others in this regard. Apparently both the congress and the Alaska Supreme Court share this view. For that reason, I do not believe that HB 414 deserves to be passed into law.

Please share this letter with the other members of the House Judiciary Committee.

Sincerely,

Frank H. Wasmer

Frank H. Wasmer

Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

TO: Rep. Johnny Ellis, Chairman
Health, Education & Social Services Committee

FROM: Rep. Ben Grussendorf

DATE: March 20, 1990

RE: HB 414; "An Act relating to notification of adoption of Indian children; changing Alaska Supreme Court Adoption Rule 10(e); and providing for an effective date."

Please consider the attached testimony as the HESS committee considers HB 414 at tomorrow's hearing. Thank you.

Jim

2 of

Alaska State Legislature

Please enter into the record my testimony to the Rules Committee,
committee name

committee on HB 414, dated 1 Mar 90.
bill/subject

Line 15 Change 10 days to 20 days. Extra time is needed 1.) because of problems with the weather, and 2.) because of all of the people involved in a family search.

Line 27 anonymity of the parents creates problems in tribal enrollment. Many adopted children do not become tribally enrolled until adulthood after time-consuming searches of archived files, because parents voluntarily terminating rights rarely enroll their children before they terminate them.

Signed: Karen Roberts Athona
Testifier

Human Services Department
Representing (Optional)

P.O. Box 1450 Sitka, Ak. 99835
Address

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UNITED STATES SUPREME COURT PROCEEDINGS

(This section reprints entries appearing in the United States Law Week received prior to the 11th day of the month of each Indian Law Reporter issue. Current issues of Law Week should be consulted for corrections or more recent information.)

Cases Docketed

88-1426 Omaha Indian Tribe v. Jackson

2/28/89, cert. CA 8.

Indians—reservation lands—representation by Department of Justice—fraud

57 U.S.L.W. 3604, Mar. 14, 1989

88-1477 Absentee Shawnee Tribe of Indians of Oklahoma v. Kansas

3/9/89, cert., CA 10 (862 F2d 1415).

Indians—lands—treaties.

57 U.S.L.W. 3622, Mar. 21, 1989

Review Granted

88-1213 Employment Division, Oregon Dept. of Human Resources v. Smith

Ruling below (Ore SupCt, 307 Ore 68, 763 P2d 146):

On remand from U.S. Supreme Court, 56 LW 4357 (US SupCt 1988), for determination of whether ingestion of peyote in religious ceremony violates state's criminal laws, it is held that state controlled substance statute makes no exception for sacramental use of peyote but that first amendment would forbid state from using its criminal law to punish good-faith religious use of peyote by adult members of Native American Church; accordingly, prior holding that first amendment entitles employees who have been discharged for ingesting peyote in Native American Church ceremonies to unemployment compensation is reaffirmed.

Question presented: Does first amendment's free exercise clause protect person's religiously motivated use of peyote from reach of state's general criminal law prohibition?

57 U.S.L.W. 3612, Mar. 21, 1989

Review Denied

88-1128 California v. Folkins

Ruling below (*Mattz v. Superior Court of Del Norte County*, Calif SupCt, 46 Cal3d 355):

State prosecution of Yurok Indians for alleged violations of criminal provisions of state Fish and Game Code, on basis of defendants' activities in Klamath River on Hoopa Valley Indian Reservation, is ordered restrained on basis of ruling in People v. McCovey, 36 Cal3d 517 (Calif SupCt 1984), which held that comprehensive federal regulation of Indian fishing rights on that reservation preempts state from criminally prosecuting reservation Indians for such activity; state's claim that Yurok Indians enjoy no federally protected fishing rights in Klamath River is contrary to state and federal precedents; nor do precedents support state's underlying claim that, after California's entry into union, federal government lost any right to reserve Indian fishing rights in Klamath River through its subsequent establishment of Indian reservation on federally owned land adjacent to river; furthermore, federal government intended to make such reservation when it extended Hoopa Valley Reservation in 1891.

57 U.S.L.W. 3615, Mar. 21, 1989

88-1170 Boise-Kuna Irrigation District v. U.S.

Ruling below (*In re General Adjudication of Rights to Use Water from the Snake River Basin Water System*, Idaho SupCt, 764 P2d 78):

McCarran Amendment, which waives United States' sovereign immunity in any suit for adjudication of water rights of river or other source, by virtue of its legislative and judicial history, requires that rights of all claimants on river and all of its tributaries be included in adjudication in order for United States to be subject to jurisdiction of tribal court.

57 U.S.L.W. 3652, Apr. 4, 1989

Hearings Scheduled

April 25, 1989

88-309 Wyoming v. U.S.

Certiorari, Wyo SupCt (753 P2d 76). 57 LW 3267 (one hour).

57 U.S.L.W. 3629, Mar. 21, 1989

Argued Cases Awaiting Decision

87-1165 California v. U.S.

Certiorari, CA 9 (830 F2d 139).

Does United States enjoy sovereign immunity from suit challenging orders of Secretary of Interior that revised boundaries of Indian reservations, resulting in new allocation of water rights? 57 LW 3030 (Argued 11/28/88).

57 U.S.L.W. 3600, Mar. 14, 1989

87-1622, 87-1697 & 87-1711 Brendale v. Confederated Bands and Tribes of Yakima Indian Nation; Wilkinson v. Confederated Tribes and Bands of Yakima Indian Nation; and Yakima v. Confederated Tribes and Bands of Yakima Indian Nation

Certiorari, CA 9 (828 F2d 529).

Does Indian tribe have authority to regulate land use of non-trust lands within reservation owned in fee by non-members of tribe? 57 LW 3031 (Argued 1/10/89).

57 U.S.L.W. 3601, Mar. 14, 1989

UNITED STATES SUPREME COURT

COTTON PETROLEUM CORP., et al. v. NEW MEXICO, et al.

No. 87-1327 (U.S. Sup. Ct., Apr. 25, 1989)

[**Editor's Note**: *Due to deadline exigencies, we can publish only the Supreme Court's Syllabus of this opinion in this issue. The full opinion and dissent will appear in the upcoming May issue of the Indian Law Reporter.*]

Summary

(From the Court Syllabus.)

Pursuant to authority granted by the Indian Mineral Leasing Act of 1938 (1938 Act), the Jicarilla Apache Tribe (tribe) leased lands on its New Mexico reservation to appellant Cotton Petroleum Corp. (Cotton), a non-Indian company, for the production of oil and gas. Cotton's on-reservation production is subject to both a 6 percent tribal severance tax and appellee state's 8 percent severance taxes, which apply to all producers throughout the state. In 1982, Cotton paid its state taxes under protest and then brought an action in state court under, *inter alia*, the commerce clause of the federal Constitution, contending that the state taxes were invalid on the basis of evidence tending to prove that the amount of such taxes imposed on reservation activity far exceeded the value of services the state provided in relation to such activity. The tribe filed a brief amicus curiae arguing that a decision upholding the state taxes would substantially interfere with the tribe's ability to raise its own tax rates and would diminish the desirability of on-reservation leases. The trial court upheld the state taxes, concluding, among other things, that the state provides substantial services to both the tribe and Cotton, that the theory of public finance does not require that expenditures equal revenues, that the taxes' economic and legal burden falls on Cotton and has no adverse impact on tribal interests, and that the taxes are not preempted by federal law. The state court of appeals affirmed. This Court noted probable jurisdiction and invited the parties to brief and argue the additional question whether the commerce clause requires a tribe to be treated as a "state" for purposes of determining whether a state tax on nontribal activities conducted on a reservation must be apportioned to account for taxes the tribe imposed on the same activity.

Held:

The state may validly impose severance taxes on the same on-reservation production of oil and gas by non-Indian lessees as is subject to the tribe's own severance tax. Pp. 8-27 [slip op.]

(a) Under this Court's modern decisions, on-reservation oil and gas production by non-Indian lessees is subject to nondiscriminatory state taxation unless Congress has expressly or impliedly acted to preempt the state taxes. *See, e.g., Helvering v. Mountain Producers Corp.*, 303 U.S. 376, 386-87. Pp. 8-11 [slip op.].

(b) The state taxes in question are not preempted by federal law, even when it is given the most generous construction under the relevant preemption test, which is flexible and sensitive to the particular facts and legislation involved and requires a particularized examination of the relevant state, federal, and tribal interests, including tribal sovereignty and independence. The 1938 Act neither expressly permits nor precludes state taxation, but simply authorizes the leasing for mining purposes of Indian lands. Moreover, that Act's legislative history sheds little light on congressional intent. The statement therein that preexisting law was inadequate to give Indians the greatest return for their property does not embody a broad congressional policy of maximizing tribes' revenues without regard to competing state interests, but simply suggests that Congress sought to remove disadvantages in mineral leasing on Indian lands that were not present with respect to public lands, which were, at the time, subject to state taxation. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 767, n.5, distinguished. The fact that the 1938 Act's statutory predecessor expressly waived immunity from state taxation of oil and gas lessees on reservations demonstrates that there is no history of tribal independence from such taxation, while the 1938 Act's omission of that waiver simply reflects congressional recognition that this Court's intervening decisions had repudiated the preexisting doctrine of intergovernmental tax immunity, under which such state taxation was barred absent express congressional authorization. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, and *Ramah Navajo School Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, are distinguished on the ground that, here, the state provides substantial services to the tribe and Cotton that justify the tax; the tax imposes no economic burden on the tribe; and federal and tribal regulation is not exclusive, since the state regulates the spacing and mechanical integrity of on-reservation wells. Pp. 11-22 [slip op.].

(c) There is no merit to Cotton's contention that the state's severance taxes—insofar as they are imposed without allocation or apportionment on top of tribal taxes—impose an unlawful multiple tax burden on interstate commerce. The fact that the state and tribe tax the same activity is not dispositive, since each of those entities has taxing jurisdiction over the non-Indian wells by virtue of the location of Cotton's leases entirely on reservation lands within a single state. That the total tax burden on Cotton is greater than the burden on off-reservation producers is also not determinative, since neither taxing jurisdiction's tax is discriminatory, and the burdensome consequence is entirely attributable to the fact of concurrent jurisdiction. The argument that the state taxes generate revenues that far exceed the value of the state's on-reservation services is also rejected. Moreover, there is no constitutional requirement that the benefits received from a taxing authority by an ordinary commercial taxpayer—or by those living in the taxpayer's community—must equal the amount of its tax obligations. Pp. 22-26 [slip. op].

(d) The express language, distinct applications, and judicial interpretation of the interstate commerce and Indian commerce clauses establish that Indian tribes may not be treated as "states" for tax apportionment purposes. Pp. 26-27 [slip. op].

106 N.M. 517, 745 P.2d 1170 [14 Indian L. Rep. 5003], affirmed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined.

UNITED STATES SUPREME COURT

MISSISSIPPI BAND OF CHOCTAW INDIANS v. HOLYFIELD, et al.

No. 87-980 (U.S. Sup. Ct., Apr. 3, 1989)

Summary

(From the Court Syllabus.)

On the basis of extensive evidence indicating that large numbers of Indian children were being separated from their families and tribes and were being placed in non-Indian homes through state adoption, foster care, and parental rights termination proceedings, and that this practice caused serious problems for the children, their parents, and their tribes, Congress enacted the Indian Child Welfare Act of 1978 (ICWA), which, *inter alia*, gives tribal courts exclusive jurisdiction over custody proceedings involving an Indian child "who resides or is domiciled within" a tribe's reservation. This case involves the status of twin illegitimate babies, whose parents were enrolled members of appellant tribe and residents and domiciliaries of its reservation in Neshoba County, Mississippi. After the twins' births in Harrison County, some 200 miles from the reservation, and their parents' execution of consent-to-adoption forms, they were adopted in that county's

chancery court by the appellees Holyfield, who were non-Indian. That court subsequently overruled appellant's motion to vacate the adoption decree, which was based on the assertion that under the ICWA exclusive jurisdiction was vested in appellant's tribal court. The Supreme Court of Mississippi affirmed, holding, among other things, that the twins were not "domiciled" on the reservation under state law, in light of the chancery court's findings (1) that they had never been physically present there, and (2) that they were "voluntarily surrendered" by their parents, who went to some efforts to see that they were born outside the reservation and promptly arranged for their adoption. Therefore, the court said, the twins' domicile was in Harrison County, and the chancery court properly exercised jurisdiction over the adoption proceedings.

Held:

The twins were "domiciled" on the tribe's reservation within the meaning of the ICWA's exclusive tribal jurisdiction provision, and the chancery court was, accordingly, without jurisdiction to enter the adoption decree. Pp. 11-23 [slip op.].

(a) Although the ICWA does not define "domicile," Congress clearly intended a uniform federal law of domicile for the ICWA and did not consider the definition of the word to be a matter of state law. The ICWA's purpose was, in part, to make clear that in certain situations the state courts did *not* have jurisdiction over child custody proceedings. In fact, the statutory congressional findings demonstrate that Congress perceived the states and their courts as partly responsible for the child separation problem it intended to correct. Thus, it is most improbable that Congress would have intended to make the scope of the statute's key jurisdictional provision subject to definition by state courts as a matter of state law. Moreover, Congress could hardly have intended the lack of nationwide uniformity that would result from state law definitions of "domicile," whereby different rules could apply from time to time to the same Indian child, simply as a result of her being moved across state lines. Pp. 12-16 [slip op.].

(b) The generally accepted meaning of the term "domicile" applies under the ICWA, to the extent it is not inconsistent with the objectives of the statute. In the absence of a statutory definition, it is generally assumed that the legislative purpose is expressed by the ordinary meaning of the words used, in light of the statute's object and policy. Well-settled common law principles provide that the domicile of minors, who generally are legally incapable of forming the requisite intent to establish a domicile, is determined by that of their parents, which has traditionally meant the domicile of the mother in the case of illegitimate children. Thus, since the domicile of the twins' mother (as well as their father) has been, at all relevant times, on appellant's reservation, the twins were also domiciled there even though they have never been there. This result is not altered by the fact that they were "voluntarily surrendered" for adoption. Congress enacted the ICWA because of concerns going beyond the wishes of individual parents, finding that the removal of Indian children from their cultural setting seriously impacts on long-term tribal survival and has a damaging social and psychological impact on many individual Indian children. These concerns demonstrate that Congress could not have intended to enact a rule of domicile that would permit individual Indian parents to defeat the ICWA's jurisdictional scheme simply by giving birth and placing the child for adoption off the reservation. Pp. 16-22 [slip op.].

511 So. 2d 918 [14 Indian L. Rep. 5070], reversed and remanded.

Full Text

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, O'CONNOR, and SCALIA, JJ., joined. STEVENS, J., filed a dissenting opinion, in which REHNQUIST, C.J., and KENNEDY, J., joined.

This appeal requires us to construe the provisions of the Indian Child Welfare Act that establish exclusive tribal jurisdiction over child custody proceedings involving Indian children domiciled on the tribe's reservation.

I

A

The Indian Child Welfare Act of 1978 (ICWA), 92 Stat. 3069, 25 U.S.C. §§ 1901-1963, was the product of rising concern in the mid-1970s over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes. Senate oversight hearings in 1974 yielded numerous examples, statistical data, and expert testimony documenting what one witness called "the wholesale removal of Indian children from their homes, . . . the most tragic aspect of Indian life today." Indian Child Welfare Program. Hearings before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 93d Cong., 2d Sess., 3 (hereinafter 1974 Hearings) (statement of William Byler). Studies undertaken by the Association on American Indian Affairs in 1969 and 1974, and presented in the Senate hearings, showed that 25 to 35 percent of all Indian children had been separated from their families and placed in adoptive families, foster care, or institutions. *Id.* at 15; *see also* H.R. Rep. No. 95-1386 at 9 (1978) (hereinafter House Report). Adoptive placements counted significantly in this total: in the state of Minnesota, for example, one in eight Indian children under the age of 18 was in an adoptive home, and during the year 1971-1972 nearly one in every four infants under one year of age was placed for adoption. The adoption rate of Indian children was eight times that of non-Indian children. Approximately 90 percent of the Indian placements were in non-Indian homes. 1974 Hearings at 75-83. A number of witnesses also testified to the serious adjustment problems encountered by such children during adolescence,[1] as well as the impact of the adoptions on Indian parents and the tribes themselves. *See generally* 1974 Hearings.

[1] For example, Dr. Joseph Westermeyer, a University of Minnesota social psychiatrist, testified about his research with Indian adolescents who experienced difficulty coping in white society, despite the fact that they had been raised in a purely white environment:

> "[T]hey were raised with a white cultural and social identity. They are raised in a white home. They attended, predominantly white schools, and in almost all cases, attended a church that was predominantly white, and really came to understand very little about Indian culture, Indian behavior, and had virtually no viable Indian identity. They can recall such things as seeing cowboys and Indians on TV and feeling that Indians were a historical figure but were not a viable contemporary social group.
>
> "Then during adolescence, they found that society was not to grant them the white identity that they had. They began to find this out in a number of ways. For example, a universal experience was that when they began to date white children, the parents of the white youngsters were against this, and there were pressures

Further hearings, covering much the same ground, were held during 1977 and 1978 on the bill that became the ICWA.[2] While much of the testimony again focused on the harm to Indian parents and their children who were involuntarily separated by decisions of local welfare authorities, there was also considerable emphasis on the impact on the tribes themselves of the massive removal of their children. For example, Mr. Calvin Isaac, Tribal Chief of the Mississippi Band of Choctaw Indians and representative of the National Tribal Chairmen's Association, testified as follows:

> 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. Furthermore, the practices seriously undercut the tribes' ability to continue as self-governing communities. Probably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships.

1978 Hearings at 193. *See also id.* at 62.[3] Chief Isaac also summarized succinctly what numerous witnesses saw as the principal reason for the high rates of removal of Indian children:

> One of the most serious failings of the present system is that Indian children are removed from the custody of their natural parents by nontribal government authorities who have no basis for intelligently evaluating the cultural and social premises underlying Indian home life and child-rearing. Many of the individuals who decide the fate of our children are at best ignorant of our cultural values, and at worst contemptful of the Indian way and convinced that removal, usually to a non-Indian household or institution, can only benefit an Indian child.

Id. at 191-92.[4]

The congressional findings that were incorporated into the ICWA reflect these sentiments. The Congress found:

> (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children . . .;
>
> (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
>
> (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.

25 U.S.C. § 1901.

At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings. Section 1911 lays out a dual jurisdictional scheme. Section 1911(a) establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child "who resides or is domiciled within the reservation of such tribe," as well as for wards of tribal courts regardless of domicile.[5] Section 1911(b), on the other hand, creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation: on petition of either parent or the tribe, state court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of "good cause," objection by either parent, or declination of jurisdiction by the tribal court.

Various other provisions of ICWA Title I set procedural and substantive standards for those child custody proceedings that do take place in state court. The procedural safeguards include requirements concerning notice and appointment of counsel; parental and tribal rights of intervention and petition for invalidation of illegal proceedings; procedures governing voluntary consent to termination of parental rights; and a full faith and credit obligation in respect to tribal court decisions. *See* sections 1901-1914. The most important substantive requirement imposed on state courts is that of section 1915(a), which, absent "good cause" to the contrary, mandates that adoptive placements be made preferentially with (1) members of the child's extended family, (2) other members of the same tribe, or (3) other Indian families.

The ICWA thus, in the words of the House Report accompanying it, "seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society." House Report at 23. It does so by establishing "a Federal policy that, where possible, an Indian child should remain in the Indian community," *ibid.*, and by making sure that Indian child welfare determinations are not

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among white children from the parents not to date these Indian children . . .

The other experience was derogatory name calling in relation to their racial identity . . .

. . . .

[T]hey were finding that society was putting on them an identity which they didn't possess and taking from them an identity that they did possess.

1974 Hearings at 46.

[2]Hearing on S. 1214 before the Senate Select Committee on Indian Affairs, 95th Cong., 1st Sess. (1977) (hereinafter 1977 Hearings); Hearings 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) (hereinafter 1978 Hearings).

[3]These sentiments were shared by the ICWA's principal sponsor in the House, Rep. Morris Udall, *see* 124 Cong. Rec. 38102 (1978) ("Indian tribes and Indian people are being drained of their children and, as a result, their future as a tribe and a people is being placed in jeopardy"), and its minority sponsor, Rep. Robert Lagomarsino, *see ibid.* ("This bill is directed at conditions which . . . threaten . . . the future of American Indian tribes . . .").

[4]One of the particular points of concern was the failure of non-Indian child welfare workers to understand the role of the extended family in Indian society. The House Report on the ICWA noted: "An Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family. Many social workers, untutored in the ways of Indian family life or assuming them to be socially irresponsible, consider leaving the child with persons outside the nuclear family as neglect and thus as grounds for terminating parental rights." House Report at 10. At the conclusion of the 1974 Senate hearings, Senator Abourezk noted the role that such extended families played in the care of children: "We've had testimony here that in Indian communities throughout the Nation there is no such thing as an abandoned child because when a child does have a need for parents for one reason or another, a relative or a friend will take that child in. It's the extended family concept." 1974 Hearings 473. *See also Wisconsin Potawatomies of Hannahville Indian Community v. Houston*, 393 F. Supp. 719 (1 Indian L. Rep. No. 1, p. 59) (W.D. Mich. 1975) (discussing custom of extended family and tribe assuming responsibility for care of orphaned children).

[5]Section 1911(a) reads in full:

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

based on "a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family." *Id.* at 24.[6]

B

This case involves the status of twin babies, known for our purposes as B.B. and G.B., who were born out of wedlock on December 29, 1985. Their mother, J.B., and father, W.J., were both enrolled members of appellant Mississippi Band of Choctaw Indians (tribe), and were residents and domiciliaries of the Choctaw Reservation in Neshoba County, Mississippi. J.B. gave birth to the twins in Gulfport, Harrison County, Mississippi, some 200 miles from the reservation. On January 10, 1986, J.B. executed a consent-to-adoption form before the Chancery Court of Harrison County. Record 8-10.[7] W.J. signed a similar form.[8] On January 16, appellees Orrey and Vivian Holyfield[9] filed a petition for adoption in the same court, *id.* at 1-5, and the chancellor issued a final decree of adoption on January 28. *Id.* at 13-14.[10] Despite the court's apparent awareness of the ICWA,[11] the adoption decree contained no reference to it, nor to the infants' Indian background.

Two months later the tribe moved in the chancery court to vacate the adoption decree on the ground that under the ICWA exclusive jurisdiction was vested in the tribal court. *Id.* at 15-18.[12] On July 14, 1986, the court overruled the motion, holding that the tribe "never obtained exclusive jurisdiction over the children involved herein. . . ." The court's one-page opinion relied on two facts in reaching that conclusion. The court noted first that the twins' mother "went to some efforts to see that they were born outside the confines of the Choctaw Indian Reservation" and that the parents had promptly arranged for the adoption by the Holyfields. Second, the court stated: "At no time from the birth of these children to the present date have either of them resided on or physically been on the Choctaw Indian Reservation." *Id.* at 78.

The Supreme Court of Mississippi affirmed. 511 So. 2d 918 (1987). It rejected the tribe's arguments that the state court lacked jurisdiction and that it, in any event, had not applied the standards laid out in the ICWA. The court recognized that the jurisdictional question turned on whether the twins were domiciled on the Choctaw Reservation. It answered that question as follows:

> At no point in time can it be said the twins resided on or were domiciled within the territory set aside for the reservation. Appellant's argument that living within the womb of their mother qualifies the children's residency on the reservation may be lauded for its creativity; however, apparently it is unsupported by any law within this state, and will not be addressed at this time due to the far-reaching legal ramifications that would occur were we to follow such a complicated tangential course.

Id at 921. The court distinguished Mississippi cases that appeared to establish the principle that "the domicile of minor children follows that of the parents," *ibid.*; *see Boyle v. Griffin*, 84 Miss. 41, 36 So. 141 (1904); *Stubbs v. Stubbs*, 211 So. 2d 821 (Miss. 1968); *see also In re Guardianship of Watson*, 317 So. 2d 30 (Miss. 1975). It noted that "the Indian twins . . . were voluntarily surrendered and legally abandoned by the natural parents to the adoptive parents, and it is undisputed that the parents went to some efforts to prevent the children from being placed on the reservation as the mother arranged for their birth and adoption in Gulfport Memorial Hospital, Harrison County, Mississippi." 511 So. 2d at 921. Therefore, the court said, the twins' domicile was in Harrison County and the state court properly exercised jurisdiction over the adoption proceedings. Indeed, the court appears to have concluded that, for this reason, *none* of the provisions of the ICWA was applicable. *Ibid.* ("these proceedings . . . actually escape applicable federal law on Indian Child Welfare"). In any case, it rejected the tribe's contention that the requirements of the ICWA applicable in state courts had not been followed: "[T]he judge did conform and strictly adhere to the minimum federal standards governing adoption of Indian children with respect to parental consent, notice, service of process, etc." *Ibid.*[13]

Because of the centrality of the exclusive tribal jurisdiction provision to the overall scheme of the ICWA, as well as the conflict between this decision of the Mississippi Supreme Court and

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[6]The quoted passages are from the House Report's discussion of section 1915, in which the ICWA attempts to accomplish these aims, in regard to nondomiciliaries of the reservation, through the establishment of standards for state-court proceedings. In regard to reservation domiciliaries, these goals are pursued through the establishment of exclusive tribal jurisdiction under section 1911(a).

Beyond its jurisdictional and other provisions concerning child custody proceedings, the ICWA also created, in its Title II, a program of grants to Indian tribes and organizations to aid in the establishment of child welfare programs. *See* 25 U.S.C. §§ 1931-1934.

[7]Section 1913(a) of the ICWA requires that any voluntary consent to termination of parental rights be executed in writing and recorded before a judge of a "court of competent jurisdiction," who must certify that the terms and consequences of the consent were fully explained and understood. Section 1913(a) also provides that any consent given prior to birth or within 10 days thereafter is invalid. In this case the mother's consent was given 12 days after the birth. *See also* n.26, *infra*.

[8]W.J.'s consent to adoption was signed before a notary public in Neshoba County on January 11, 1986. Record 11-12. Only on June 3, 1986, however—well after the decree of adoption had been entered and after the tribe had filed suit to vacate that decree—did the chancellor of the chancery court certify that W.J. had appeared before him in Harrison County to execute the consent to adoption. *Id.* at 12-A.

[9]Appellee Orrey Holyfield died during the pendency of this appeal.

[10]Mississippi adoption law provides for a six-month waiting period between interlocutory and final decrees of adoption, but grants the chancellor discretionary authority to waive that requirement and immediately enter a final decree of adoption. *See* Miss. Code Ann. § 93-17-13 (1972). The chancellor did so here. Record 14, with the result that the final decree of adoption was entered less than one month after the babies' birth.

[11]The chancellor's certificates that the parents had appeared before him to consent to the adoption recited that "the Consent and Waiver was given in full compliance with Section 103(a) of Public Law 95-608" (*i.e.*, 25 U.S.C. §1913(a)). Record 10, 12-A.

[12]The ICWA specifically confers standing on the Indian child's tribe to participate in child custody adjudications. Section 1914 authorizes the tribe (as well as the child and its parents) to petition a court to invalidate any foster care placement or termination of parental rights under state law "upon a showing that such action violated any provision of sections 1911, 1912, and 1913" of the ICWA. *See also* section 1911(c) (Indian child's tribe may intervene at any point in state-court proceedings for foster care placement or termination of parental rights). "Termination of parental rights" is defined in section 1903(1)(ii) as "any action resulting in the termination of the parent-child relationship."

[13]The lower court may well have fulfilled the applicable ICWA procedural requirements. *But see* n.8, *supra*, and n.26, *infra*. It clearly did not, however, comply with or even take cognizance of the substantive mandate of section 1915(a): "In any adoptive placement of an Indian child *under State law*, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families" (emphasis added). Section 1915(e), moreover, requires the court to maintain records "evidencing the efforts to comply with the order of preference specified in this section." Notwithstanding the tribe's argument below that section 1915 had been violated, *see* brief for appellant 20-22 and appellant's brief in support of petition for rehearing 11-12 in No. 57,659 (Miss. Sup. Ct.), the Mississippi Supreme Court made no reference to it, merely stating in conclusory fashion that the "minimum federal standards" had been met. 511 So. 2d 918, 921 (1987).

those of several other state courts,[14] we granted plenary review. 485 U.S. ___ (1988).[15] We now reverse.

II

Tribal jurisdiction over Indian child custody proceedings is not a novelty of the ICWA. Indeed, some of the ICWA's jurisdictional provisions have a strong basis in pre-ICWA case law in the federal and state courts. *See, e.g., Fisher v. District Court*, 424 U.S. 382 [3 Indian L. Rep. a-6] (1976) (*per curiam*) (tribal court had exclusive jurisdiction over adoption proceeding where all parties were tribal members and reservation residents); *Wisconsin Potowatomies of Hannahville Indian Community v. Houston*, 393 F. Supp. 719 (W.D. Mich. 1973) (tribal court had exclusive jurisdiction over custody of Indian children found to have been domiciled on reservation); *Wakefield v. Little Light*, 276 Md. 333, 347 A.2d 228 [2 Indian L. Rep. No. 12, p. 26] (1975) (same); *In re Adoption of Buehl*, 87 Wash. 2d 649, 555 P.2d 1334 (1976) (state court lacked jurisdiction over custody of Indian children placed in off-reservation foster care by tribal court order); *see also In re Lelah-puc-ka-chee*, 98 F. 429 (N.D. Iowa 1899) (state court lacked jurisdiction to appoint guardian for Indian child living on reservation). In enacting the ICWA Congress confirmed that, in child custody proceedings involving Indian children domiciled on the reservation, tribal jurisdiction was exclusive as to the states.

The state court proceeding at issue here was a "child custody proceeding." That term is defined to include any " 'adoptive placement' which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption." 25 U.S.C. § 1903(1)(iv). Moreover, the twins were "Indian children." *See* 25 U.S.C. § 1903(4). The sole issue in this case is, as the Supreme Court of Mississippi recognized, whether the twins were "domiciled" on the reservation.[16]

A

The meaning of "domicile" in the ICWA is, of course, a matter of Congress' intent. The ICWA itself does not define it. The initial question we must confront is whether there is any reason to believe that Congress intended the ICWA definition of "domicile" to be a matter of state law. While the meaning of a federal statute is necessarily a federal question in the sense that its construction remains subject to this Court's supervision, *see* P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, *Hart and Wechsler's The Federal Courts and the Federal System* 566 (3d ed. 1988); *cf. Reconstruction Finance Corporation v. Beaver County*, 328 U.S. 204, 210 (1946), Congress sometimes intends that a statutory term be given content by the application of state law. *De Sylva v. Ballentine*, 351 U.S. 570, 580 (1956); *see also Beaver County, supra; Helvering v. Stuart*, 317 U.S. 154, 161-62 (1942). We start, however, with the general assumption that "in the absence of a plain indication to the contrary, . . . Congress when it enacts a statute is not making the application of the federal act dependent on state law." *Jerome v. United States*, 318 U.S. 101, 104 (1943); *NLRB v. Natural Gas Utility Dist.*, 402 U.S. 600, 603 (1971); *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 119 (1983). One reason for this rule of construction is that federal statutes are generally intended to have uniform nationwide application. *Jerome, supra*, at 104; *Dickerson, supra*, at 119-20; *United States v. Pelzer*, 312 U.S. 399, 402-03 (1941). Accordingly, the cases in which we have found that Congress intended a state law definition of a statutory term have often been those where uniformity clearly was not intended. *E.g., Beaver County, supra*, at 209 (statute permitting states to apply their diverse local tax laws to real property of certain government corporations). A second reason for the presumption against the application of state law is the danger that "the federal program would be impaired if state law were to control." *Jerome, supra*, at 104; *Dickerson, supra*, at 119-20; *Pelzer*, 312 U.S. at 402-03. For this reason, "we look to the purpose of the statute to ascertain what is intended." *Id.* at 403.

In *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111 (1944), we rejected an argument that the term "employee" as used in the Wagner Act should be defined by state law. We explained our conclusion as follows:

> Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no . . . patchwork plan for securing freedom of employees' organization and of collective bargaining. The Wagner Act is . . . intended to solve a national problem on a national scale. . . . Nothing in the statute's background, history, terms or purposes indicates its scope is to be limited by . . . varying local conceptions, either statutory or judicial, or that it is to be administered in accordance with whatever different standards the respective states may see fit to adopt for the disposition of unrelated, local problems.

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[14] *See, e.g., In re Adoption of Halloway*, 732 P.2d 962 [14 Indian L. Rep. 5006] (Utah 1986); *In re Adoption of Baby Child*, 102 N.M. 735, 700 P.2d 198 (App. 1985); *In re Appeal in Pima County Juvenile Action No. S-903*, 130 Ariz. 202, 635 P.2d 187 [8 Indian L. Rep. 4054] (App. 1981), *cert. denied sub nom. Catholic Social Services of Tucson v. P.C.*, 455 U.S. 1007 (1982).

[15] Because it was unclear whether this case fell within the Court's appellate jurisdiction, we postponed consideration of our jurisdiction to the hearing on the merits. Pursuant to the version of 28 U.S.C. § 1257(2) applicable to this appeal, we have appellate jurisdiction to review a state court judgment "where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." It is sufficient that the validity of the state statute be challenged and sustained as applied to a particular set of facts. *Volt Information Sciences, Inc. v. Board of Trustees of Stanford University*, 489 U.S. ___, ___, n.4 (1989); *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 288-90 (1921). In practice, whether such an as-applied challenge comes within our appellate jurisdiction often turns on how that challenge is framed. *See Hanson v. Denkla*, 357 U.S. 235, 244 (1958); *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 650-51 (1942).

In the present case appellants argued below "that the state lower court jurisdiction over these adoptions was preempted by plenary federal legislation." Brief for appellant in No. 57,659 (Miss. Sup. Ct.), p. 5. Whether this formulation "squarely" challenges the validity of the state adoption statute as applied, *see Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 440-41 (1979), or merely asserts a federal right or immunity, 28 U.S.C. § 1257(3), is a difficult question to which the answer must inevitably be somewhat arbitrary. Since in the near future our appellate jurisdiction will extend only to rare cases, *see* Pub. L. 100-352, 102 Stat. 662, it is also a question of little prospective importance. Rather than attempting to resolve this question, therefore, we think it advisable to assume that the appeal is improper and to consider by writ of certiorari the important question this case presents. *See Spencer v. Texas*, 385 U.S. 554, 557 n.3 (1967). We therefore dismiss the appeal, treat the papers as a petition for writ of certiorari, 28 U.S.C. § 2103, and grant the petition. (For convenience, we will continue to refer to the parties as appellant and appellees.)

[16] "Reservation" is defined quite broadly for purposes of the ICWA. *See* 25 U.S.C. § 1903(10). There is no dispute that the Choctaw Reservation falls within that definition.

Section 1911(a) does not apply "where such jurisdiction is otherwise vested in the State by existing Federal law." This proviso would appear to refer to Pub. L. 280, 67 Stat. 588, as amended, which allows states under certain conditions to assume civil and criminal jurisdiction on the reservations. ICWA § 1918 permits a tribe in that situation to reassume jurisdiction over child custody proceedings upon petition to the Secretary of the Interior. The state of Mississippi has never asserted jurisdiction over the Choctaw Reservation under Public Law 280. *See* F. Cohen, *Handbook of Federal Indian Law* 362-63, and nn. 122-25 (1982); *cf. United States v. John*, 437 U.S. 634 [5 Indian L. Rep. A-93] (1978).

Id. at 123. *See also Natural Gas Utility Dist., supra*, at 603-04. For the two principal reasons that follow, we believe that what we said of the Wagner Act applies equally well to the ICWA.

First, and most fundamentally, the purpose of the ICWA gives no reason to believe that Congress intended to rely on state law for the definition of a critical term: quite the contrary. It is clear from the very text of the ICWA, not to mention its legislative history and the hearings that led to its enactment, that Congress was concerned with the rights of Indian families and Indian communities vis-à-vis state authorities.[17] More specifically, its purpose was, in part, to make clear that in certain situations the state courts did *not* have jurisdiction over child custody proceedings. Indeed, the congressional findings that are a part of the statute demonstrate that Congress perceived the states and their courts as partly responsible for the problem it intended to correct. *See* 25 U.S.C. § 1901(5) (state "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").[18] Under these circumstances it is most improbable that Congress would have intended to leave the scope of the statute's key jurisdictional provision subject to definition by state courts as a matter of state law.

Second, Congress could hardly have intended the lack of nationwide uniformity that would result from state law definitions of domicile. An example will illustrate. In a case quite similar to this one, the New Mexico state courts found exclusive jurisdiction in the tribal court pursuant to section 1911(a), because the illegitimate child took the reservation domicile of its mother at birth—notwithstanding that the child was placed in the custody of adoptive parents two days after its off-reservation birth and the mother executed a consent to adoption ten days later. *In re Adoption of Baby Child*, 102 N.M. 735, 737-38, 700 P.2d 198, 200-01 (App. 1985).[19] Had that mother traveled to Mississippi to give birth, rather than to Albuquerque, a different result would have obtained if state law definitions of domicile applied. The same, presumably, would be true if the child had been transported to Mississippi for adoption after her off-reservation birth in New Mexico. While the child's custody proceeding would have been subject to exclusive tribal jurisdiction in her home state, her mother, prospective adoptive parents, or an adoption intermediary could have obtained an adoption decree in state court merely by transporting her across state lines.[20] Even if we could conceive of a federal statute under which different rules of domicile (and thus of jurisdiction) applied differently to different Indian children, a statute under which different rules apply from time to time to the same child, simply as a result of her transport from one state to another, cannot be what Congress had in mind.[21]

We therefore think it beyond dispute that Congress intended a uniform federal law of domicile for the ICWA.[22]

B

It remains to give content to the term "domicile" in the circumstances of the present case. The holding of the Supreme Court of Mississippi that the twin babies were not domiciled on the Choctaw Reservation appears to have rested on two findings of fact by the trial court: (1) that they had never been physically present there, and (2) that they were "voluntarily surrendered" by their parents. 511 So. 2d at 921; *see* Record 78. The question before us, therefore, is whether under the ICWA definition of "domicile" such facts suffice to render the twins nondomiciliaries of the reservation.

We have often stated that in the absence of a statutory definition we "start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v. United States*, 369 U.S. 1, 9 (1962); *Russello v. United States*, 464 U.S. 16, 21 (1983). We do so, of course, in the light of the "object and policy" of the statute. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 285 (1956) (quoting *United States v. Boisdoré's Heirs*, 8 How. 113, 122 (1849)). We therefore look both to the generally accepted meaning of the term "domicile" and to the purpose of the statute.

That we are dealing with a uniform federal rather than a state definition does not, of course, prevent us from drawing on general state law principles to determine "the ordinary meaning of the words used." Well-settled state law can inform our understanding of what Congress had in mind when it employed a term it did not define. Accordingly, we find it helpful to borrow established common law principles of domicile to the extent that they are not inconsistent with the objectives of the congressional scheme.

"Domicile" is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-laws purposes, and its meaning is generally uncontroverted. *See generally Restatement* §§ 11-23; R. Leflar, L. McDougal, & R. Felix, *American Conflicts Law* 17-38 (4th ed. 1986); R. Weintraub, *Commentary on the Conflict of Laws* 12-24 (2d ed. 1980). "Domicile" is not necessarily synonymous with "residence," *Perri v. Kisselbach*, 34 N.J. 84, 87, 167 A.2d 377, 379 (1961), and one can reside in one place but be domiciled in another. *District of Columbia v. Murphy*, 314 U.S. 441 (1941); *In re Estate of Jones*, 192 Iowa 78, 80, 182 N.W. 227, 228 (1921). For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there. *Texas v. Florida*, 306 U.S. 398, 424 (1939). One acquires a "domicile of origin" at birth, and that domicile continues until a new one (a "domicile of choice") is acquired. *Jones, supra*, at 81, 182 N.W. at 228; *In re*

[17]This conclusion is inescapable from a reading of the entire statute, the main effect of which is to curtail state authority. *See especially* sections 1901, 1911, 1912, 1913, 1914, 1915, 1916, 1918.

[18]*See also* 124 Cong. Rec. 38103 (1978) (letter from Rep. Morris K. Udall to Assistant Attorney General Patricia M. Wald) ("state courts and agencies and their procedures share a large part of the responsibility" for crisis threatening "the future and integrity of Indian tribes and Indian families"); House Report at 19 ("Contributing to this problem has been the failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future"). *See also In re Adoption of Halloway*, 732 P.2d at 969 (Utah state court "quite frankly might be expected to be more receptive than a tribal court to [Indian child's] placement with non-Indian adoptive parents. Yet this receptivity of the non-Indian forum to non-Indian placement of an Indian child is precisely one of the evils at which the ICWA was aimed").

[19]Some details of the *Baby Child* case are taken from the briefs in *Pino v. District Court*, O.T. 1984, No. 84-248. That appeal was dismissed under this Court's Rule 53, 472 U.S. 1001 (1985), following the appellant's successful collateral attack, in the case cited in the text, on the judgment from which appeal had been taken.

[20]Nor is it inconceivable that a state might apply its law of domicile in such a manner as to render inapplicable section 1911(a) even to a child who had lived several years on the reservation but was removed from it for the purpose of adoption. Even in the less extreme case, a state law definition of domicile would likely spur the development of an adoption brokerage business. Indian children, whose parents consented (with or without financial inducement) to give them up, could be transported for adoption to states like Mississippi where the law of domicile permitted the proceedings to take place in state court.

[21]For this reason, the general rule that domicile is determined according to the law of the forum, *see Restatement (Second) of Conflict of Laws* § 13 (1971) (hereinafter *Restatement*), can have no application here.

[22]We note also the likelihood that, had Congress intended a state law definition of domicile, it would have said so. Where Congress did intend that ICWA terms be defined by reference to other than federal law, it stated this explicitly. *See* section 1903(2) ("extended family member" defined by reference to tribal law or custom), section 1903(6) ("Indian custodian" defined by reference to tribal law or custom and to state law).

Estate of Moore, 68 Wash. 2d 792, 796, 415 P.2d 653, 656 (1966). Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of their parents. *Yarborough v. Yarborough*, 290 U.S. 202, 211 (1933). In the case of an illegitimate child, that has traditionally meant the domicile of its mother. *Kowalski v. Wojtkowski*, 19 N.J. 247, 258, 116 A.2d 6, 12 (1955); *Moore*, *supra*, at 796, 415 P.2d at 656; *Restatement* § 14(2), § 22, Comment *c*; 25 Am. Jur. 2d, *Domicil* § 69 (1966). Under these principles, it is entirely logical that "[o]n occasion, a child's domicil of origin will be in a place where the child has never been." *Restatement* § 14, Comment *b*.

It is undisputed in this case that the domicile of the mother (as well as the father) has been, at all relevant times, on the Choctaw Reservation. Tr. of oral arg. 28-29. Thus, it is clear that at their birth the twin babies were also domiciled on the reservation, even though they themselves had never been there. The statement of the Supreme Court of Mississippi that "[a]t no point in time can it be said the twins . . . were domiciled within the territory set aside for the reservation," 511 So. 2d at 921, may be a correct statement of that state's law of domicile, but it is inconsistent with generally accepted doctrine in this country and cannot be what Congress had in mind when it used the term in the ICWA.

Nor can the result be any different simply because the twins were "voluntarily surrendered" by their mother. Tribal jurisdiction under section 1911(a) was not meant to be defeated by the actions of individual members of the tribe, for Congress was concerned not solely about the interests of Indian children and families, but also about the impact on the tribes themselves of the large numbers of Indian children adopted by non-Indians. *See* 25 U.S.C. §§ 1901(3) ("there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children"), 1902 ("promote the stability and security of Indian tribes").[23] The numerous prerogatives accorded the tribes through the ICWA's substantive provisions, *e.g.*, §§ 1911(a) (exclusive jurisdiction over reservation domiciliaries), 1911(b) (presumptive jurisdiction over nondomiciliaries), 1911(c) (right of intervention), 1912(a) (notice), 1914 (right to petition for invalidation of state court action), 1915(c) (right to alter presumptive placement priorities applicable to state court actions), 1915(e) (right to obtain records), 1919 (authority to conclude agreements with states), must, accordingly, be seen as a means of protecting not only the interests of individual Indian children and families, but also of the tribes themselves.

In addition, it is clear that Congress' concern over the placement of Indian children in non-Indian homes was based in part on evidence of the detrimental impact on the children themselves of such placements outside their culture.[24] Congress determined to subject such placements to the ICWA's jurisdictional and other provisions, even in cases where the parents consented to an adoption, because of concerns going beyond the wishes of individual parents. As the 1977 Final Report of the congressionally established American Indian Policy Review Commission stated, in summarizing these two concerns, "[r]emoval of Indian children from their cultural setting seriously impacts a long-term tribal survival and has damaging social and psychological impact on many individual Indian children." Senate Report at 52.[25]

These congressional objectives make clear that a rule of domicile that would permit individual Indian parents to defeat the ICWA's jurisdictional scheme is inconsistent with what Congress intended.[26] *See In re Adoption of Child of Indian Heritage*, 111 N.J. 155, 168-71, 543 A.2d 925, 931-33 [15 Indian L. Rep. 5089] (1988). The appellees in this case argue strenuously that the twins' mother went to great lengths to give birth off the reservation so that her children could be adopted by the Holyfields. But that was precisely part of Congress' concern. Permitting individual members of the tribe to avoid tribal exclusive jurisdiction by the simple expedient of giving birth off the reservation would, to a large extent, defeat the purpose the ICWA was intended to accomplish.[27] The Supreme Court of Utah expressed this well in

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[23] *See also supra*, at 3 [slip op.], and n.3.

[24] In large part the concerns that emerged during the congressional hearings on the ICWA were based on studies showing recurring developmental problems encountered during adolescence by Indian children raised in a white environment. *See* n.1, *supra*. *See also* 1977 Hearings at 114 (statement of American Academy of Child Psychiatry); S. Rep. No. 95-597, p. 43 (1977) (hereinafter Senate Report). More generally, placements in non-Indian homes were seen as "depriving the child of his or her tribal and cultural heritage." *Id.* at 45; *see also* 124 Cong. Rec. 38102-03 (1978) (remarks of Rep. Lagomarsino). The Senate Report on the ICWA incorporates the testimony in this sense of Louis La Rose, Chairman of the Winnebago Tribe, before the American Indian Policy Review Commission:

> I think the cruelest trick that the white man has ever done to Indian children is to take them into adoption courts, erase all of their records and send them off to some nebulous family that has a value system that is A-1 in the State of Nebraska and that child reaches 16 or 17, he is a little brown child residing in a white community and he goes back to the reservation and he has absolutely no idea who his relatives are, and they effectively make him a non-person and I think . . . they destroy him.

Senate Report at 43. Thus, the conclusion seems justified that, as one state court has put it, "[t]he Act is based on the fundamental assumption that it is in the Indian child's best interest that its relationship to the tribe be protected." *In re Appeal in Pima County Juvenile Action No. S-903*, 130 Ariz. at 204, 635 P.2d at 189.

[25] While the statute itself makes clear that Congress intended the ICWA to reach voluntary as well as involuntary removal of Indian children, the same conclusion can also be drawn from the ICWA's legislative history. For example, the House Report contains the following expression of Congress' concern with both aspects of the problem:

> One of the effects of our national paternalism has been to so alienate some Indian [parents] from their society that they abandon their children at hospitals or to welfare departments rather than entrust them to the care of relatives in the extended family. Another expression of it is the involuntary, arbitrary, and unwarranted separation of families.

House Report at 12.

[26] The Bureau of Indian Affairs pointed out, in issuing nonbinding ICWA guidelines for the state courts, that the terms "residence" and "domicile" "are well defined under existing state law. There is no indication that these state law definitions tend to undermine in any way the purposes of the Act." 44 Fed. Reg. 67584, 67585 (1979). The clear implication is that state law that *did* tend to undermine the ICWA's purposes could not be taken to express Congress' intent. There is some authority for the proposition that abandonment can effectuate a change in the child's domicile. *In re Adoption of Halloways*, 732 P.2d at 967, although this may not be the majority rule. *See Restatement* § 22, Comment *c* (abandoned child generally retains the domicile of the last-abandoning parent). In any case, as will be seen below, the Supreme Court of Utah declined in the *Halloways* case to apply Utah abandonment law to defeat the purpose of the ICWA. Similarly, the conclusory statement of the Supreme Court of Mississippi that the twin babies had been "legally abandoned," 511 So. 2d at 921, cannot be determinative of ICWA jurisdiction.

There is also another reason for reaching this conclusion. The predicate for the state court's abandonment finding was the parents' consent to termination of their parental rights, recorded before a judge of the state chancery court. ICWA § 1913(a) requires, however, that such a consent be recorded before a judge of a court of competent jurisdiction. *See* n.7, *supra*. In the case of reservation-domiciled children, that could be only the tribal court. The children therefore could not be made nondomiciliaries of the reservation through any such state court consent.

[27] It appears, in fact, that all Choctaw women give birth off the reservation because of the lack of appropriate obstetric facilities there. *See* Juris Statement 4, n.2. In most cases, of course, the mother and child return to the reservation after the birth, and this would presumably be sufficient to make the child a reservation domiciliary even under the Mississippi court's theory. Application of the Mississippi domicile rule would,

its scholarly and sensitive opinion in what has become a leading case on the ICWA:

> To the extent that [state] abandonment law operates to permit [the child's] mother to change [the child's] domicile as part of a scheme to facilitate his adoption by non-Indians while she remains a domiciliary of the reservation, it conflicts with and undermines the operative scheme established by subsections [1911(a)] and [1913(a)] to deal with children of domiciliaries of the reservation and weakens considerably the tribe's ability to assert its interest in its children. The protection of this tribal interest is at the core of the ICWA, which recognizes that the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents. This relationship between Indian tribes and Indian children domiciled on the reservation finds no parallel in other ethnic cultures found in the United States. It is a relationship that many non-Indians find difficult to understand and that non-Indian courts are slow to recognize. It is precisely in recognition of this relationship, however, that the ICWA designates the tribal court as the exclusive forum for the determination of custody and adoption matters for reservation-domiciled Indian children, and the preferred forum for nondomiciliary Indian children. [State] abandonment law cannot be used to frustrate the federal legislative judgment expressed in the ICWA that the interests of the tribe in custodial decisions made with respect to Indian children are as entitled to respect as the interests of the parents.

In re Adoption of Halloway, 732 P.2d 962, 969-70 (1986).

We agree with the Supreme Court of Utah that the law of domicile Congress used in the ICWA cannot be one that permits individual reservation-domiciled tribal members to defeat the tribe's exclusive jurisdiction by the simple expedient of giving birth and placing the child for adoption off the reservation. Since, for purposes of the ICWA, the twin babies in this case were domiciled on the reservation when adoption proceedings were begun, the Choctaw Tribal Court possessed exclusive jurisdiction pursuant to 25 U.S.C. § 1911(a). The Chancery Court of Harrison County was, accordingly, without jurisdiction to enter a decree of adoption; under ICWA § 1914 its decree of January 28, 1986, must be vacated.

III

We are not unaware that over three years have passed since the twin babies were born and placed in the Holyfield home, and that a court deciding their fate today is not writing on a blank slate in the same way it would have in January 1986. Three years' development of family ties cannot be undone, and a separation at this point would doubtless cause considerable pain.

Whatever feelings we might have as to where the twins should live, however, it is not for us to decide that question. We have been asked to decide the legal question of *who* should make the custody determination concerning these children—not what the outcome of that determination should be. The law places that decision in the hands of the Choctaw Tribal Court. Had the mandate of the ICWA been followed in 1986, of course, much potential anguish might have been avoided, and in any case the law cannot be applied so as automatically to "reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation." *Halloway*, *supra*, at 972. It is not ours to say whether the trauma that might result from removing these children from their adoptive family should outweigh the interest of the tribe—and perhaps the children themselves—in having them raised as part of the Choctaw community.[28] Rather, "we must defer to the experience, wisdom, and compassion of the [Choctaw] tribal courts to fashion an appropriate remedy." *Ibid.*

The judgment of the Supreme Court of Mississippi is reversed and the case remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, dissenting:

The parents of these twin babies unquestionably expressed their intention to have the state court exercise jurisdiction over them. J.B. gave birth to the twins at a hospital 200 miles from the reservation, even though a closer hospital was available. Both parents gave their written advance consent to the adoption and, when the adoption was later challenged by the tribe, they reaffirmed their desire that the Holyfields adopt the two children. As the Mississippi Supreme Court found, "the parents went to some efforts to prevent the children from being placed on the reservation as the mother arranged for their birth and adoption in Gulfport Memorial Hospital, Harrison County, Mississippi." 511 So. 2d 918, 921 (1987). Indeed, both parents appear before us today, urging that Vivian Holyfield be allowed to retain custody of B.B. and G.B.

Because J.B.'s domicile is on the reservation and the children are eligible for membership in the tribe, the Court today closes the state courthouse door to her. I agree with the Court that Congress intended a uniform federal law of domicile for the Indian Child Welfare Act of 1978 (ICWA), 92 Stat. 3069, 25 U.S.C. §§ 1901-1963, and that domicile should be defined with reference to the objectives of the congressional scheme. "To ascertain [the term's] meaning we . . . consider the Congressional history of the Act, the situation with reference to which it was enacted, and the existing judicial precedents, with which Congress may be taken to have been familiar in at least a general way." *District of Columbia v. Murphy*, 314 U.S. 441, 449 (1941). I cannot agree, however, with the cramped definition the Court gives that term. To preclude parents domiciled on a reservation from deliberately invoking the adoption procedures of state court, the Court gives "domicile" a meaning that Congress could not have intended and distorts the delicate balance between individual rights and group rights recognized by the ICWA.

The ICWA was passed in 1978 in response to congressional findings 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 "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." 25 U.S.C. § 1901(4), (5). (Emphasis added.) The Act is thus primarily addressed to the unjustified removal of Indian children from their families through the application of standards that inadequately recognized the distinct Indian culture.[1]

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however, permit state authorities to avoid the tribal court's exclusive section 1911(a) jurisdiction by removing a newborn from an allegedly unfit mother while in the hospital, and seeking to terminate her parental rights in state court.

[28] We were assured at oral argument that the Choctaw Court has the authority under the tribal code to permit adoption by the present adoptive family, should it see fit to do so. Tr. of oral arg. 17.

[1] The House Report found that "Indian families face vastly greater risks of involuntary separation than are typical of our society as a whole." H.R. Rep. No. 95-1386 at 9 (1978) (hereinafter House Report). The Senate Report similarly states that the Act was motivated by "reports that an

The most important provisions of the ICWA are those setting forth minimum standards for the placement of Indian children by state courts and providing procedural safeguards to insure that parental rights are protected.[2] The Act provides that any party seeking to effect a foster care placement of, or involuntary termination of parental rights to, an Indian child must establish by stringent standards of proof that efforts have been made to prevent the breakup of the Indian family and that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. Sections 1912(d), (e), (f). Each party to the proceeding has a right to examine all reports and documents filed with the court and an indigent parent or custodian has the right to appointment of counsel. Sections 1912(b), (c). In the case of a voluntary termination, the ICWA provides that consent is valid only if given after the terms and consequences of the consent have been fully explained, may be withdrawn at any time up to the final entry of a decree of termination or adoption, and even then may be collaterally attacked on the grounds that it was obtained through fraud or duress. Section 1913. Finally, because the Act protects not only the rights of the parents, but also the interests of the tribe and the Indian children, the Act sets forth criteria for adoptive, foster care, and preadoptive placements that favor the Indian child's extended family or tribe, and that can be altered by resolution of the tribe. Section 1915.

The Act gives Indian tribes certain rights, not to restrict the rights of parents of Indian children, but to complement and help effect them. The Indian tribe may petition to transfer an action in state court to the tribal court, but the Indian parent may veto the transfer. Section 1911(b).[3] The Act provides for a tribal right of notice and intervention in involuntary proceedings but not in voluntary ones. Sections 1911(c), 1912(a).[4] Finally, the tribe may petition the court to set aside a parental termination action upon a showing that the provisions of the ICWA that are designed to protect parents and Indian children have been violated. Section 1914.[5]

While the Act's substantive and procedural provisions effect a major change in state child custody proceedings, its jurisdictional provision is designed primarily to preserve tribal sovereignty over the domestic relations of tribe members and to confirm a developing line of cases which held that the tribe's exclusive jurisdiction could not be defeated by the temporary presence of an Indian child off the reservation. The legislative history indicates that Congress did not intend "to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits." House Report at 19; Wamser, *Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus*, 10 N.M. L. Rev. 413, 416 (1980). The apparent intent of Congress was to overrule such decisions as that in *In re Cantrell*, 159 Mont. 66, 495 P.2d 179 (1972), in which the state placed an Indian child, who had lived on a reservation with his mother, in a foster home only three days after he left the reservation to accompany his father on a trip. Jones, *Indian Child Welfare - A Jurisdictional Approach*, 21 Ariz. L. Rev. 1123, 1129 (1979). Congress specifically approved a series of cases in which the state courts declined jurisdiction over Indian children who were wards of the tribal court, *In re Adoption of Buehl*, 87 Wash. 2d 649, 555 P.2d 1334 (1976); *Wakefield v. Little Light*, 276 Md. 333, 347 A.2d 228 (1975), or whose parents were temporarily residing off the reservation, *Wisconsin Potowatomies of Hannahville Indian Community v. Houston*, 393 F. Supp. 719 (W.D. Mich. 1973), but exercised jurisdiction over Indian children who had never lived on a reservation and whose Indian parents were not then residing on a reservation. *In re Greybull*, 23 Ore. App. 674, 543 P.2d 1079 (1975); *see* House Report at 21.[6] It did not express any disapproval of decisions such as that of the United States Court of Appeals for the Ninth Circuit in *United States ex rel. Cobell v. Cobell*, 503 F.2d 790 (1974), *cert. denied*, 421 U.S. 999 (1975), which indicated that a Montana state court could exercise jurisdiction over an Indian child custody dispute because the parents "by voluntarily invoking the state court's jurisdiction for divorce purposes, . . . clearly submitted the question of their children's custody to the judgment of the Montana state courts." 503 F.2d at 795 (emphasis deleted).

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alarmingly high percentage of Indian children were being separated from their natural parents through the actions of nontribal government agencies." S. Rep. No. 95-597, at 11 (1977). *See also* 124 Cong. Rec. 12532 (1978) (remarks of Rep. Udall) ("The record developed by the Policy Review Commission, by the Senate Interior Committee in the 94th Congress, and by the Senate Select Committee on Indian Affairs and our own Interior Committee in the 95th Congress has disclosed what almost amounts to a callous raid on Indian children. Indian children are removed from their parents and families by State agencies for the most specious of reasons in proceedings foreign to the Indian parents"); *id.* at 38102 (remarks of Rep. Udall) ("Studies have revealed that about 25 percent of all Indian children are removed from their homes and placed in some foster care or adoptive home or institution"); *id.* at 38103 (remarks of Rep. Lagomarsino) ("For Indians generally and tribes in particular, the continued wholesale removal of their children by nontribal government and private agencies constitutes a serious threat to their existence as ongoing, self-governing communities"); Hearing on S. 1214 before the Senate Select Committee on Indian Affairs, 95th Cong., 1st Sess. 1 (1977) ("It appears that for decades Indian parents and their children have been at the mercy of arbitrary or abusive action of local, State, Federal and private agency officials. Unwarranted removal of children from their homes is common in Indian communities").

[2] "The purpose of the bill (H.R. 12533), introduced by Mr. Udall et al., is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes of institutions which will reflect the unique values of Indian culture and by providing for assistance to Indian tribes and organizations in the operation of child and family service programs." House Report at 8 (footnote omitted). *See also* 124 Cong. Rec. 38102 (1978) (remarks of Rep. Udall) ("[The Act] clarifies the allocation of jurisdiction over Indian child custody proceedings between Indian tribes and the States. More importantly, it establishes minimum Federal standards and procedural safeguards to protect Indian families when faced with child custody proceedings against them in State agencies or courts").

[3] The statute provides in part:

> (b) Transfer of proceedings; declination by tribal court
>
> In any state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

25 U.S.C. § 1911.

[4] *See* 44 Fed. Reg. 67584, 67586 (1979) ("The Act mandates a tribal right of notice and intervention in involuntary proceedings but not in voluntary ones").

[5] Significantly, the tribe cannot set aside a termination of parental rights on the grounds that the adoptive placement provisions of section 1915, favoring placement with the tribe, have not been followed.

[6] Some of the cases cited approvingly by Congress involved a deliberate abandonment. In *Wakefield v. Little Light*, 276 Md. 333, 347 A.2d 228 (1975), the court upheld exclusive tribal jurisdiction where it was clear that there was no abandonment. In *Wisconsin Potowatomies of Hannahville Indian Community v. Houston*, 393 F. Supp. 719 (W.D. Mich. 1973), there was no abandonment, the children had lived on the reservation and were members of the Indian tribe, and the children's clothing and toys were at a home on the reservation that continued to be available to them. Finally, in *In re Adoption of Buehl*, 87 Wash. 2d 649, 555 P.2d 1334 (1976), the child was a ward of the tribal court and an enrolled member of the tribe.

The Report of the American Indian Policy Review Commission, an early proponent of the ICWA, makes clear the limited purposes that the term "domicile" was intended to serve:

> Domicile is a legal concept that does not depend exclusively on one's physical location at any one given moment in time, rather it is based on the apparent intention of permanent residency. Many Indian families move back and forth from a reservation dwelling to border communities or even to distant communities, depending on employment and educational opportunities. . . . In these situations, where family ties to the reservation are strong, but the child is temporarily off the reservation, a fairly strong legal argument can be made for tribal court jurisdiction.

Report on Federal, State, and Tribal Jurisdiction 86 (Comm. Print 1976).[7]

Although parents of Indian children are shielded from the exercise of state jurisdiction when they are temporarily off the reservation, the Act also reflects a recognition that allowing the tribe to defeat the parents' deliberate choice of jurisdiction would be conducive neither to the best interests of the child nor to the stability and security of Indian tribes and families. Section 1911(b), providing for the exercise of concurrent jurisdiction by state and tribal courts when the Indian child is not domiciled on the reservation, gives the Indian parents a veto to prevent the transfer of a state court action to tribal court.[8] "By allowing the Indian parents to 'choose' the forum that will decide whether to sever the parent-child relationship, Congress promotes the security of Indian families by allowing the Indian parents to defend in the court system that most reflects the parents' familial standards." Jones, 21 Ariz. L. Rev. at 1141. As Mr. Calvin Isaac, Tribal Chief of the Mississippi Band of Choctaw Indians stated in testimony to the House Subcommittee on Indian Affairs and Public Lands with respect to a different provision:

> The ultimate responsibility for child welfare rests with the parents and we would not support legislation which interfered with that basic relationship.

Hearings 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. 62 (1978).[9]

If J.B. and W.J. had established a domicile off the reservation, the state courts would have been required to give effect to their choice of jurisdiction; there should not be a different result when the parents have not changed their own domicile, but have expressed an unequivocal intent to establish a domicile for their children off the reservation. The law of abandonment, as enunciated by the Mississippi Supreme Court in this case, does not defeat, but serves the purposes of the Act. An abandonment occurs when a parent deserts a child and places the child with another with an intent to relinquish all parental rights and obligations. *Restatement (Second) of Conflict of Laws* § 22, Comment *e* (1971) (hereinafter *Restatement*); *In re Adoption of Halloway*, 732 P.2d 962, 966 (Utah 1986). If a child is abandoned by his mother, he takes on the domicile of his father; if the child is abandoned by his father, he takes on the domicile of his mother. *Restatement* § 22, Comment *e*; 25 Am. Jur. 2d, *Domicil* § 69 (1966). If the child is abandoned by both parents, he takes on the domicile of a person other than the parents who stands *in loco parentis* to him. *In re Adoption of Halloway, supra*, at 966; *In re Estate of Moore*, 68 Wash. 2d 792, 796, 415 P.2d 653, 656 (1966); *Harlan v. Industrial Accident Comm'n*, 194 Cal. 352, 228 P. 654 (1924); *Restatement* § 22, Comment *i*; *cf. In re Guardianship of D.L.L. and C.L.L.*, 291 N.W.2d 278, 282 [7 Indian L. Rep. 4024] (S.D. 1980).[10] To be effective, the intent to abandon or the actual physical abandonment must be shown by clear and convincing evidence. *In re Adoption of Halloway, supra*, at 966; *C.S. v. Smith*, 483 S.W.2d 790, 793 (Mo. App. 1972).[11]

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[7] In a letter to the House of Representatives, the Department of Justice explained its understanding that the provision was addressed to the involuntary termination of parental rights in tribal members by state agencies unaware of exclusive tribal jurisdiction:

> As you may be aware, the courts have consistently recognized that tribal governments have exclusive jurisdiction over the domestic relationships of tribal members located on reservations, unless a State has assumed concurrent jurisdiction pursuant to Federal legislation such as Public Law 83-280. It is our understanding that this legal principle is often ignored by local welfare organizations and foster homes in cases where they believe Indian children have been neglected, and that S. 1214 is designed to remedy this, and to define Indian rights in such cases.

House Report at 35.

[8] The explanation of this subsection in the House Committee Report reads as follows:

> Subsection (b) directs a State court, having jurisdiction over an Indian child custody proceeding to transfer such proceeding, absent good cause to the contrary, to the appropriate tribal court upon the petition of the parents or the Indian tribe. Either parent is given the right to veto such transfer. The subsection is intended to permit a State court to apply a modified doctrine of *forum non conveniens*, in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the tribe are fully protected.

Id. at 21. In commenting on the provision, the Department of Justice suggested that the section should be clarified to make it perfectly clear that a state court need not surrender jurisdiction of a child custody proceeding if the Indian parent objected. The Department of Justice letter stated:

> Section 101(b) should be amended to prohibit clearly the transfer of a child placement proceeding to a tribal court when any parent or child over the age of 12 objects to the transfer.

Id. at 32.

Although the specific suggestion made by the Department of Justice was not in fact implemented, it is noteworthy that there is nothing in the legislative history to suggest that the recommended change was in any way inconsistent with any of the purposes of the statute.

[9] Chief Isaac elsewhere expressed a similar concern for the rights of parents with reference to another provision. *See* Hearing, *supra* n.1, at 158 (statement of Calvin Isaac on behalf of National Tribal Chairmen's Association) ("We believe the tribe should receive notice in all such cases but where the child is neither a resident nor domiciliary of the reservation intervention should require the consent of the natural parents or the blood relative in whose custody the child has been left by the natural parents. It seems there is a great potential in the provisions of section 101(c) for infringing parental wishes and rights").

[10] The authority of a state to exercise jurisdiction over a child in a child custody dispute when the child is physically present in a state and has been abandoned is also recognized by federal statute. *See* Parental Kidnapping Prevention Act of 1980, 94 Stat. 3569, 28 U.S.C. § 1738A(c)(2); *see also* Uniform Child Custody Jurisdiction Act, 9 U.L.A. § 3 (1988).

[11] The Court suggests that there could be no legally effective abandonment because the parents consented to termination of their parental rights before a judge of the state court and not a tribal court judge. *Ante* at 20 [slip op.] n.26. That suggestion ignores the findings of the state supreme court that the natural parents did virtually everything they could do to abandon the children to persons outside the reservation: the Indian twins have never resided outside of Harrison County, Mississippi, and were voluntarily surrendered and legally abandoned by the natural parents to the adoptive parents, and it is undisputed that the parents went to some efforts to prevent the children from being placed on the reservation as the mother arranged for their birth and adoption in Gulfport Memorial Hospital, Harrison County, Mississippi. 511 So. 2d 918, 921 (Miss. 1987). In any event, even a consent to adoption that does not meet statutory requirements may be effective to constitute an abandonment and change the minor's domicile. *See Wilson v. Pierce*, 14 Utah 2d 317, 321, 383 P.2d 925, 927 (1963); H. Clark, *Law of Domestic Relations in the United States* 633 (1968).

When an Indian child is temporarily off the reservation, but has not been abandoned to a person off the reservation, the tribe has an interest in exclusive jurisdiction. The ICWA expresses the intent that exclusive tribal jurisdiction is not so frail that it should be defeated as soon as the Indian child steps off the reservation. Similarly, when the child is abandoned by one parent to a person off the reservation, the tribe and the other parent domiciled on the reservation may still have an interest in the exercise of exclusive jurisdiction. That interest is protected by the rule that a child abandoned by one parent takes on the domicile of the other. But when an Indian child is deliberately abandoned by both parents to a person off the reservation, no purpose of the ICWA is served by closing the state courthouse door to them. The interests of the parents, the Indian child, and the tribe in preventing the unwarranted removal of Indian children from their families and from the reservation are protected by the Act's substantive and procedural provisions. In addition, if both parents have intentionally invoked the jurisdiction of the state court in an action involving a non-Indian, no interest in tribal self-governance is implicated. *See McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 173 (1973); *Williams v. Lee*, 358 U.S. 217, 219-20 (1959); *Felix v. Patrick*, 145 U.S. 317, 332 (1892).

The interpretation of domicile adopted by the Court requires the custodian of an Indian child who is off the reservation to haul the child to a potentially distant tribal court unfamiliar with the child's present living conditions and best interests. Moreover, it renders any custody decision made by a state court forever suspect, susceptible to challenge at any time as void for having been entered in the absence of jurisdiction.[12] Finally, it forces parents of Indian children who desire to invoke state court jurisdiction to establish a domicile off the reservation. Only if the custodial parent has the wealth and ability to establish a domicile off the reservation will the parent be able to use the processes of state court. I fail to see how such a requirement serves the paramount congressional purpose of "promot[ing] the stability and security of Indian tribes and families. 25 U.S.C. § 1902.

The Court concludes its opinion with the observation that whatever anguish is suffered by the Indian children, their natural parents, and their adoptive parents because of its decision today is a result of their failure to initially follow the provisions of the ICWA. *Ante* at 18 [slip op.]. By holding that parents who are domiciled on the reservation cannot voluntarily avail themselves of the adoption procedures of state court and that all such proceedings will be void for lack of jurisdiction, however, the Court establishes a rule of law that is virtually certain to ensure that similar anguish will be suffered by other families in the future. Because that result is not mandated by the language of the ICWA and is contrary to its purposes, I respectfully dissent.

[12]The facts of *In re Adoption of Halloway*, 732 P.2d 962 (Utah 1986), which the Court cites approvingly, *ante* at 21-22 [slip op.], vividly illustrate the problem. In that case, the mother, a member of an Indian tribe in New Mexico, voluntarily abandoned an Indian child to the custody of the child's maternal aunt off the reservation with the knowledge that the child would be placed for adoption in Utah. The mother learned of the adoption two weeks after the child left the reservation and did not object and, two months later, she executed a consent to adoption. Nevertheless, some two years after the petition for adoption was filed, the Indian tribe intervened in the proceeding and set aside the adoption. The tribe argued successfully that regardless of whether the Indian parent consented to it, the adoption was void because she resided on the reservation and thus the tribal court had exclusive jurisdiction. Although the decision in *Halloway*, and the Court's approving reference to it, may be colored somewhat by the fact that the mother in that case withdrew her consent (a fact which would entitle her to relief even if there were only concurrent jurisdiction, *see* 25 U.S.C. § 1913(c)), the rule set forth by the majority contains no such limitation. As the tribe acknowledged at oral argument, any adoption of an Indian child effected through a state court will be susceptible of challenge by the Indian tribe no matter how old the child and how long it has lived with its adoptive parents. Tr. of oral arg. 15.

Counsel for appellant: Edwin R. Smith, Philadelphia, Mississippi

Counsel for appellees: Edward O. Miller, Gulfport, Mississippi

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UNITED STATES SUPREME COURT

OKLAHOMA TAX COMMISSION v. GRAHAM, et al.

No. 88-266 (U.S. Sup. Ct., Mar. 29, 1989)

Summary

In this case involving the attempt by the state of Oklahoma to tax cigarette sales and bingo revenues of a tribal enterprise of the Chickasaw Nation, the Tenth Circuit affirmed the decision of the U.S. District Court for the Eastern District of Oklahoma, which had dismissed the case on tribal sovereign immunity grounds. The Tenth Circuit also held that removal to federal court was proper because, even though the state's complaint facially had raised only state law questions, the "implicit federal question" of tribal immunity was involved. The U.S. Supreme Court vacated the Tenth Circuit's decision and remanded the case for reconsideration in light of the Supreme Court's discussion of removal jurisdiction and the well-pleaded complaint [illegible] *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987). On [illegible], the Tenth Circuit again held that removal and dismissal were proper.

The Supreme Court now holds that, under *Caterpillar*, the well-pleaded complaint rule defeats federal question jurisdiction in this case and that the case was improperly removed from the state courts. The Court, therefore, reverses the Tenth Circuit and expresses no opinion on the issue of tribal immunity, which it deems to be not properly before the federal courts at this time.

Full Text

PER CURIAM

The Chickasaw Nation owns and operates the Chickasaw Motor Inn in Sulphur, Oklahoma. At the Inn, the tribe conducts bingo games and sells cigarettes. Oklahoma filed a complaint against the Chickasaw Tribe and Jan Graham, who managed the enterprise for the tribe, to collect unpaid state excise taxes on the sale of cigarettes and taxes on the receipts from the bingo games. The Chickasaw Nation, asserting federal question jurisdiction under 28 U.S.C. § 1331, removed the action from the state District Court in Murray County to the United States District Court for the Eastern District of Oklahoma. The state moved to remand the case, arguing in part that the complaint alleged on its face only state statutory violations and state tax liabilities. The district court, however, denied the motion. It noted that the complaint sought to apply Oklahoma law to an Indian tribe and so implicated the federal question of tribal immunity. App. to pet. for cert. A25-A26. Shortly thereafter the district court dismissed the state's suit, finding it barred by tribal sovereign immunity. *Id.* at A27-A30.

A divided panel of the Tenth Circuit affirmed. *Oklahoma ex rel. Oklahoma Tax Comm'n v. Graham*, 822 F.2d 951 [14 Indian L. Rep. 2117] (1987). The majority concluded that removal had been proper because the state's complaint, although facially based

Alaska State Legislature

Please enter into the record my testimony to the House Health, Education & Social Svs.
committee name

committee on NB 414 , dated 3/1/90 .
bill/subject

On behalf of the 19 tribal councils of the Bering Strait region, this is to express support for HB 414 re: notification of adoption of Indian children. The tribes in the villages of the Bering Strait region are actively intervening in ICWA cases involving their tribal member children and are of the position that: ICWA recognizes certain rights of tribes in children's matters and without adequate notice, tribes cannot effectively exercise those rights. Furthermore, there must be tribal involvement early on in the placement decisions of Native children to insure best possible results for the future of these children.

The 19 tribal councils of the region are working closely with their tribal non-profit, Kawerak, Inc. to identify prospective Alaska Native adoptive families. For children indigenous to the region who are in need of adoptive placement, there are many Native families available to offer nurturing, stable homes for these children. Such placements are appropriate, guarantee tribal affiliation, and insure culturally relevant upbringing the adoptive children. There are many, many cases being brought to public attention where placement of Native children in non-Native adoptive homes resulted in severe psychological and emotional problems that often remain unresolved throughout adulthood. Our tribes are seeking to prevent these types of unnecessary tragedies from continuing by exercising their responsibility and right to fully participate in placement of adoptive children, with conscientious and deliberate effort to assure that culturally appropriate placement takes place with suitable, nurturing Native families.

Tribal involvement does not in any way compromise parental rights to confidentiality in the cases where our tribes have intervened under ICWA or otherwise participated in placement decisions. On the contrary, the governing councils of our tribes have consistently demonstrated sensitivity to the needs of the birth parents and whatever stipulations have been requested.

Our tribes have taken action on the basis that Native children have a right to be raiseed within the Native community and that, as tribes, they have primary
Signed: responsibility for seeking to protect that right. Thank you.

Testifier

Mary Miller

Mary Miller, Director Tribal Affairs, KAWERAK, INC.

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March 2, 1990

Representative Peter Goll
Alaska State Legislature
Health, Education & Social Services Committee
PO Box V (MS 3100)
Juneau, Alaska 99811

Re: House Bill 414 (Our File No. 1701.66(a))

Dear Representative Goll:

I write to express strong support for H.B. 414, an Act establishing certain procedural protections in adoption cases involving Alaska Native children. Although in attendance at the March 1, 1990 teleconference hearing on this bill, due to the shortness of time I was unable to testify.

By way of background, I have been practicing law for 12 years, most of that time in matters involving Native American affairs, including Alaska Native issues. For five years I worked in our firm's Washington, D.C. office, and for the balance of my career I have been the managing partner of our Anchorage office. Throughout this time I have been involved in a number of federal Indian Child Welfare Act (ICWA) matters, including cases in the courts of Alaska and the United States Supreme Court. I have also been deeply involved in recent years in legislative proposals to strengthen the federal Indian Child Welfare Act. Finally, my Alaska practice has included the representation at one time or another of most of the regional Native non-profit service organizations and village councils which tend to become involved in state court cases involving Alaska Native children.

House Bill 414 is an excellent bill which merits being promptly reported out of Committee with very few amendments. The background to H.B. 414 is this. The Alaska Supreme Court and the United States Supreme Court have recognized that Alaska villages have a direct interest, under the federal Indian Child Welfare Act, in the termination of parental rights to Alaska Native children, in the placement of such children in pre-adoptive and adoptive families, and in the selection of the proper court to handle a particular parental rights termination or adoption proceeding involving a village child. (On this last point (involving village court jurisdiction) the Alaska Supreme Court has stated that once a village successfully files a special "petition" with the U.S. Department of the Interior under section 108 of the ICWA, the village court may exercise jurisdiction over cases involving village children).

With this in mind, H.B. 414 addresses a very specific problem in current law. Under a recent decision of the Alaska Supreme Court all of the important rights noted above can be lost simply by virtue of a village council never knowing that a state court termination or adoption proceeding is going on.

The rights that are lost in this process are critical. A village council (or more typically the regional Native non-profit social service organization working for the village) can provide valuable services to the typical single Native mother to help her overcome the crisis which has led her to believe that the only choice before her is to give up her child. As a result of such counseling it is possible the family unit will remain intact. Even where a mother adheres to a decision to give up her child, a Native-oriented social service system can provide the desperately needed support to assist the mother in getting on with her life in a healthy and productive manner. For the Native child, the involvement of the social worker from the village council or non-profit organization can facilitate locating a Native family, as generally required by section 105 of the Indian Child Welfare Act. This function is especially critical is light of the considerable professional literature detailing the severe psychological crises which Native children face when raised in non-Native homes, particularly beginning in adolescence. The problem is not an isolated one, as evidenced by a study performed several years ago showing that nearly <u>five times</u> as many Native children were in adoptive homes as were non-Native children in Alaska, and that in excess of 90% of those Native children were in non-Native homes.

Under the Alaska Supreme Court's recent interpretation of existing law, all of the important functions which can be performed by a village council or the non-profit Native organization can be lost because (in the Court's opinion) current law does not require any notification that a proceeding is underway. Obviously, without

notice and thus knowledge of the proceeding, the salutary benefits of village council or Native association involvement cannot be realized. House Bill 414 is a direct response to this state of the law. It simply amends state law to require notification.

Before closing, it is perhaps as important to point out what H.B. 414 does not do, as what it does do. First, the bill has nothing to do with claims of "tribal sovereignty" in Alaska. It contains purely a procedural notification provision applicable in state court proceedings. It does not in any way change or add to the substantive rights accorded villages under the federal Indian Child Welfare Act or existing state law.

Second, the Bill does not change state practice. That is, the provisions in H.B. 414 reflect the current practice of the State Department of Health and Social Services in such proceedings. Those procedures are instituted today as a matter of state policy (reflecting the Department's interpretation of federal law and the Alaska Constitution). House Bill 414 would make that practice into law, and thus require the same notification procedure be followed when adoptions or terminations of parental rights occur under the auspices of a private attorney or a private adoption agency.

Third, H.B. 414 is consistent with the practice in many other states of providing tribes with notice of such proceedings.

Fourth, H.B. 414 is entirely consistent with concerns both of confidentiality and parental anonymity. With respect to confidentiality, the bill leaves unchanged the strict confidentiality provisions of existing state law, including provisions in the Alaska Supreme Court Adoption Rules. Those rules require that any notification sent to a village council (usually to the local council president) restate the strict confidentiality requirement. In my experience, village council presidents and social workers in the Native regional non-profits take these confidentiality restrictions most seriously and adhere to them rigorously. With respect to anonymity (that is, the desire of a parent to remain unknown to its child after the adoption), H.B. 414 likewise makes no change in existing law. H.B. 414 wisely provides that where parental anonymity has been requested in a proceeding, the notice sent to the village council shall contain only a case number and the initials of the parties. (On this latter point, we concur in the suggestion of Commissioner Munson that proposed section 25.23.180(d) be amended to require use of only "the case number" rather than the "initials to identify the parties.")

No adoption is truly a closed proceeding. Even in private adoptions current law requires that the Department be notified of all cases, regardless of whether they involve a Native child or a non-Native child. Already involved in the proceeding will be over

a half dozen other parties: the mother, the father, the adoptive parents, the child, a guardian ad litem and an adoption agency. The requirement that one additional party be notified and thus, as required by federal law, allowed to participate and assist the mother and the adoption process, it chooses to do so, is a very small inconvenience to bear in comparison to the substantial beneficial effects of such involvement and the village's critical interest in Native children.

Thank you very much for considering these remarks in the course of your deliberations on this important bill. Please let me know if there is any further information I can provide to assist the Committee's proceedings. Of course, if there is an opportunity to testify at any subsequent hearing on this bill, I would be most pleased and honored to do so.

Sincerely,

Lloyd Benton Miller

LBM/mmm

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ROBERT L. HARTIG (1928-1960)

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MICHAEL W. DUNDY
G. KENT EDWARDS
ROBERT B. FLINT
LAWRENCE L. HARTIG
CHRISTINE FOOTE HYATT
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L. ANDREW ROBINSON
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SPENCER C. SNEED
BONNIE J. STRATTON
MICHAEL D. WHITE

L. ANDREW ROBINSON

March 1, 1990

REPLY TO:

Anchorage

Committee on Health, Education
and Social Services
Alaska State House of Representatives

Re: House Bill 414

Members of the Committee:

House Bill 414 is designed to overturn the considered decisions of the U.S. Congress and the Alaska Supreme Court that the privacy rights of Indian birth parents should be respected in voluntary adoptions. I urge the Committee not to mandate notice over the objection of a birth parent for the same reason Congress and the Alaska Supreme Court do not require such notice. Rule 10(e) of the new adoption rules adopted by the Alaska Supreme Court, effective January 15, 1990, reads, in part, as follows:

> (e) Notice to Indian Tribe. In an adoption or relinquishment proceeding involving an Indian child, notice must be given to the child's tribe at the time of the petition or, if the child's tribe is not known at this time, reasonably promptly after the tribe has been determined. However, notice is not required if parental rights are to be voluntarily terminated and the parent files a statement that the tribe has not been served with notice in order to protect the privacy of the parent....

I represented the adoptive parents and the agency in the recent case of Catholic Social Services and C.G. and S.G. v. C.A.A. and Cook Inlet Tribal Council, 783 P.2d 1159 (Alaska 1989), in which the Alaska Supreme Court held that the Indian Child Welfare Act of 1978 (the "Act") does not require notice to tribes in voluntary adoptions. I also prepared testimony to that effect in 1978 during the Congressional hearing on the Act, and I testified in 1988 before the Senate Select Committee on Indian Affairs on a bill that attempted a wholesale repeal of all birth parent rights.

The purpose of the Act is to protect Indian birth parents, children and tribes against inappropriate removal of children from families by government or private agencies. During the 1978 Congressional hearings, our testimony generally supported the Act, but pointed out that in the area of voluntary adoptions, there could be divergent interest among birth parents, children and tribes. In such a case, it was urged upon Congress that the traditional American deference for individual privacy and family decision making be respected. Congress agreed. Birth parents were given the right to deny tribal courts jurisdiction if they lived off the reservation and to have their selection of adoptive parents be considered as grounds for altering the placement preference. Confidentiality was protected by not providing notice to tribes and permitting a confidentiality affidavit to stop release of the birth parents' identity from BIA records. The U.S. Senate refused to act on the 1988 amendments designed to reverse that judgment.

The new Alaska Supreme Court Adoption Rule 10(e) strikes the appropriate balance. Where a birth parent does not wish the tribe involved, a privacy statement can be filed. Otherwise, notice must be given. This upholds traditional individual rights as did Congress in the Act. Since under the Act and Alaska law the birth parents' wishes are paramount as to placement with adoptive parents, nothing is served by opening the proceeding which is strictly confidential under state law to third parties. Unfortunately, where this has occurred in the past, as in the case before the Alaska Supreme court and the recently publicized California case, confidentiality has not been respected after intervention. Rule 10(e) is only six weeks old. I have had three relinquishments, only one of which involved a privacy statement. I suggest the Committee allow the Rule to work before deciding to repeal it.

The real purpose of the Act is achieved through the preference for native adoptive parents. What is needed is the referral of potential Native adoptive parents to the state and private agencies. Taking away the rights and privacy of the birth parents is the wrong answer.

Very truly yours,

By: /s/ Robert B. Flint
Robert B. Flint

RBF:rb
rb\c:\docs\579\flint\bill414.ltr

Tanana Chiefs Conference, Inc.

122 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251
Fax (807) 451-8936

MEMORANDUM

TO: Johnny Ellis
Chairman HESS

FROM: Mike Walleri
General Counsel, TCC

DATE: February 28, 1990

SUBJ: Tribal Notice on Adoptions

* *

Attached are press clippings from a case in North Carolina on a ICWA case not subject to confidentiality. The tribe learned of this problem in a very round about way, and much of the tragedy of this case could have been avoided if notice to the tribe were provided in both the mother's adoption and the child's subsequent placement. We would suggest that this is a good example of why the tribes believe that notice of adoptions is a good idea.

May never be a cri...
Times News

Tragedy follows woman

EDITOR'S NOTE: The recent deaths of children attributed to child abuse has both horrified and confused residents of Alamance County and surrounding areas. What follows is the beginning of a three-part series examining one victim's tragic story, the tangled web which snags efforts by social services and what lies ahead.

By RUTH SHEEHAN
Staff Writer

GRAHAM — Drunken driving, misdemeanor larceny, breaking and entering a motor vehicle — the charges comprise a cross-section of Angela Strout's record — a list that has defined the young Eskimo-Indian woman in the eyes of many law enforcement, court and government agency officials.

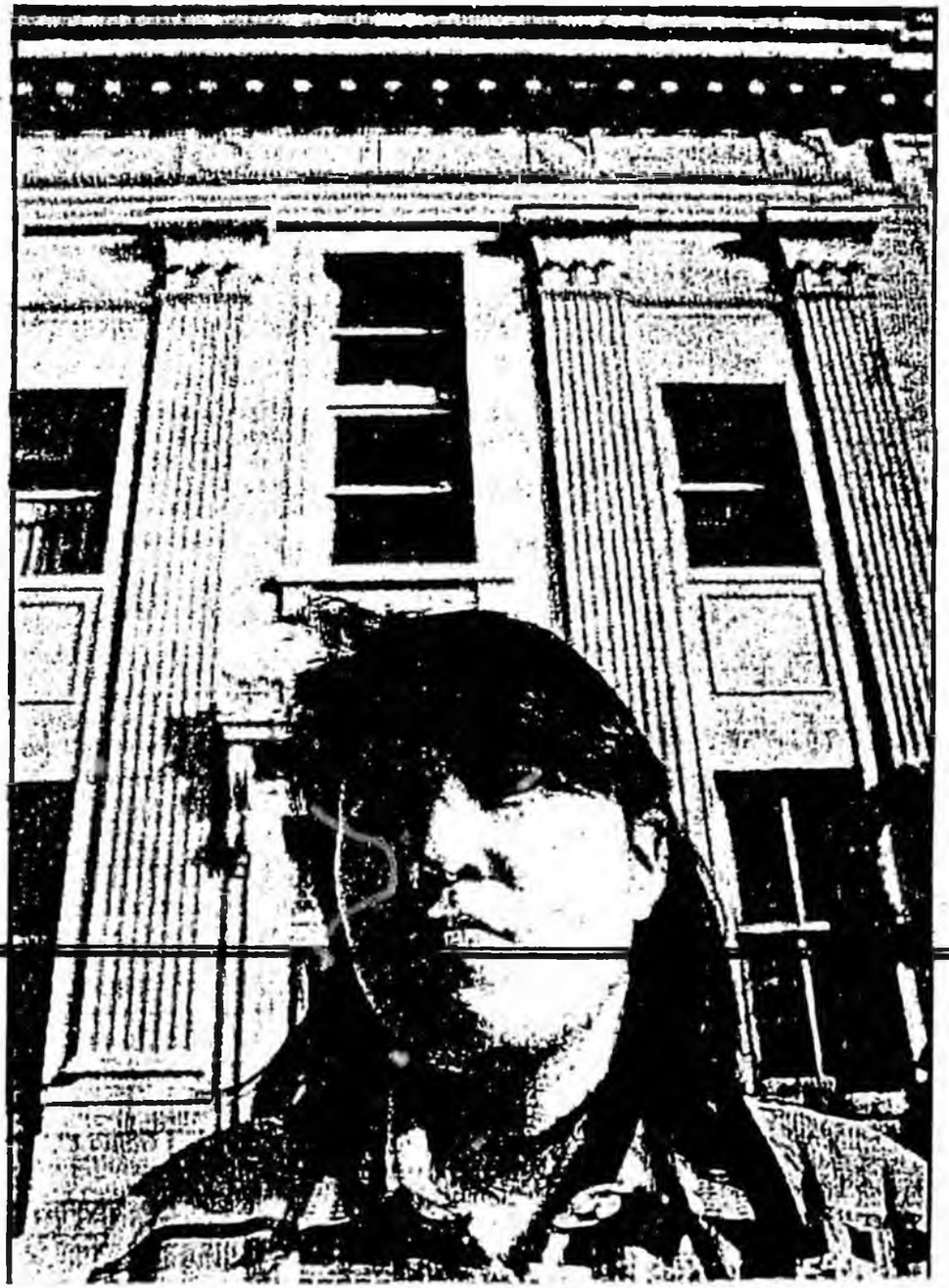
The list of petty crimes has earned her the

But written between the lines on the tally of mostly misdemeanor crimes is a list of another sort. It is a litany of the abuse that Strout has suffered in her short, troubled life.

Now, at age 18, Strout says that as an adolescent she was beaten by her mother, raped by her brother and shunned by the family who adopted her from birth. "Angel," as she is often called, says her lif[illegible]een less than heavenly. Indeed, it has been, [illegible] some ways still is, a living hell.

• • • • •

UNTIL A little more than a year ago, the petite



Carbor... a silen... wintert...

By FRANK ISLEY
Staff Writer

Each winter brin... crease in the number ... treated for carbon-... poisoning.

However, a large n... people may suffer ... effects of carbon-m... poisoning and never ... said Dr. James Str... director of Alamanc... Services Emergency S...

Most people as... accidental exposure t... monoxide with runn... mobiles in closed s... from emissions duri... ture fires.

Carbon-monoxide p... however, can result fr... ber of other things, i... improperly ventilate... properly operating ... and kerosene heate... Strickland.

The first symptoms ... monoxide poison... headaches and muscl... common symptoms d... flu season — which ... misinterpreted and d... as a flu virus, he said.

"A lot of cases are ... nized," said Stricklan...

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Richard Jordan / Daily Times-News

Angela Strout looks to a better future after troublesome past

Victims are forever scarred

By RUTH SHEEHAN
Staff Writer

In the past three months, the deaths of two Alamance County children attributed to alleged child abuse grabbed headlines. Many stories contained descriptions of the terror the youngsters endured unto death.

The bizarre tales dominated the news but perhaps more tragic are the stories seldom printed, the stories of children — like Angela Strout, who claims she was raped by her brother and beaten by her mother — who survived.

According to the people who work with its victims, child abuse — physical, sexual or emotional — leaves an indelible imprint upon their lives. They are often scarred for life.

"Angela's case is not unusual at all. In fact, it's almost a sign of the times," said Al Singer, director of the Durham Child Advocacy Commission.

Singer, who has a working knowledge of Strout's case, remarked that a criminal record, alcohol and drug abuse and teen-age pregnancy are textbook indicators of abuse.

Geri Nelson, director of the Green House, a temporary group home in Durham where Strout once stayed, often finds herself searching for clues such as those in Strout's experience to identify the marks abuse has left on the 12- to 18-year-olds she helps.

Nelson said that while the effects of abuse are case-specific, common characteristics define the victims as a group.

"There are certain characteristic clues," she said, stressing that the different traits are noted in children affected by sexual and physical abuse and neglect.

"In sexual-abuse cases, it is common to see kids becoming promiscuous as they become teen-agers because they have the feeling that sex is the only way they can receive the love they need," she said.

"They have low self-esteem. They feel as if they're not worth loving except on a sexual level. They feel as if they've been mistreated by adults. They have a hard time adjusting to adults; they are often fearful of authority and appear to be angry much of the time."

Singer agreed. "In a lot of sexual-abuse cases, there is a marked mistrust of adults," he said. "These children are scared."

The result, he added, may be rebelliousness, anger and a lack of respect for authority and authority figures.

There is also an increased tendency to run away from home to escape the episodes of abuse, Harry Derr, chief court counselor for Alamance County, said.

"One thing (experts) discovered is that when girls keep running away, it my be an indication that they are being 'bothered' at home," he said, noting [illegible] cent girls who frequently run away as potential sexual-abuse victims. "We ask them direct and indirect questions to see whether or not they've been abused."

Derr estimated that 50 to 60 percent of the young women his staff counsels have been abused in some way. He said a small percentage of cases, 10 to 15 percent, have been confirmed as sexual abuse.

See ABUSE / 2B

* * * * *

UNTIL A little more than a year ago, the petite young woman refused to discuss the abuse and terror she has survived.

To have survived was enough, she reasoned. Talking about the past was simply too much to ask. To peel back the sealed recesses of her memory would be like reopening a very painful wound. She would not consent.

In fact, says Larry Bush, the man who has come to be her spokesman and adviser, Strout probably would never have told her story at all had it not been for the fact that she wants to save her own child from the same fate. Having learned from the tragic story that is her own past, Strout vowed her 2½-year-old son, Matthew, temporarily in the custody of her parents, should never be subjected to the same fate.

"I'm just scared it may be too late," she said in her low, quiet voice.

Bush explained that he and Strout have grown increasingly concerned about the welfare of Strout's toddler son. "There have already been reports that Matthew has been beaten. The evidence of abuse is already being noticed," he said, his voice rising to a crescendo. Bush has taken up Strout's cause with fervor.

Strout asked Bush, a former co-worker, for help in her fight to regain custody of Matthew after she saw him argue his way out of a speeding ticket in Alamance County District Court.

From the police, Strout says, she had only received prejudice. She recalled, for instance, the time Graham police arrested her for breaking and entering a motor vehicle after she ran away from home. "It started snowing and she had to find a place to sleep," explained Bush, with characteristic outrage.

In this and other instances, Strout felt that she had been dealt one injustice after another.

Bush, she deduced from the proceedings in traffic court, had received justice in the same arena. She thought perhaps he could attain the same for her.

* * * * *

THUS, STROUT and Bush embarked on what has been a long, exhausting journey — into the past that has harried Strout's present, then back to the here-and-now. The future, yet to be traversed, remains uncertain.

The two of them — the bespectacled young man with kinky sand-colored hair and ivory skin and the short, sometimes haughty, sometimes nervous young woman with dark almond eyes — have struggled down a path hewn with the weeds of hate and hurt and distrust, a path overgrown with bureaucracy and strewn with red tape.

See ANGELA / 2B

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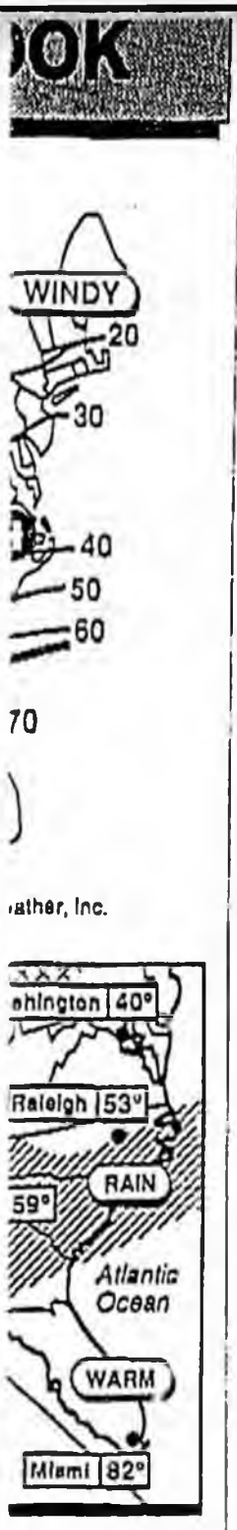


If the journey has been difficult, it has at least been cathartic for the withdrawn, frequently depressed Strout, who less than a year ago "froze up" when asked questions about her past, Bush said.

Dana Fryer, one of Strout's teachers at Graham High School, said she was surprised that her former student had finally agreed to discuss the problems which so clearly troubled her.

"From my personal experience with Angel, I saw her as being hurt and somewhat depressed. She responded well to the nurturing she received in class, but she was never able to express her feelings," Fryer said. "I'm glad she's able to talk about her problems now. She was always very guarded, she could not express herself verbally."

Today, less than two years after she dropped out of high school to support herself and her baby, Strout has begun to talk.

Bush would like her to shout from the housetops.

* * * * *

THE ABUSE, Strout says, began in 1980, not many years after the family moved to Graham.

Her adoptive father, George Strout, retired after a 20-year career in the Air Force and tried his hand at a number of endeavors, including a return to school. Now 51, he works the third shift at a local textile plant.

His wife Lynda, 42, cares for Matthew and her only natural child, Kenny, who is 12 years old. An active Pentecostal, Mrs. Strout also frequently babysits for other members of the church.

Although Strout says that the abuse began when she was 10, a school psychologist's report from 1978 suggested that the girl's parents "need to learn appropriate techniques in dealing with her. At present they feel physical punishment is the only effective tool they can use."

Mrs. Strout maintains that she had in her charge an unruly child — "rebellious and stubborn, it's the Eskimo in her" — who hit and kicked her mother. "One day, (a Department of Social Services case worker) came over and asked about bruises on Angela's body. I said, 'Bruises on her?' and lifted up my shirt. Angela had given me bruises all over my body," Mrs. Strout said in a recent interview.

The discrepancy between Mrs. Strout's contention and her adopted daughter's claim that she had been physically abused is underlined in a Dec. 19, 1984 request to DSS for "investigative and other protective services" in the family's home. The law officer who made the request said that Strout had told him that "her mother had choked her with the strap of her bookbag until she was unconscious."

DSS supervisor Donna Somers and caseworker Carey Montague reported two days later that they had decided not to file charges in juvenile court, noting the mother's response to the accusations.

Mrs. Strout told DSS that on Dec. 19, Strout had been the abuser, striking out at her mother, not she. "Mrs. Strout spoke of how Angel had physically abused her in the past," the report reads. "She has threatened to kill Mrs. Strout on several occasions and has hit Mrs. Strout at least three different times."

In this and other instances, Strout felt she had no voice. The already shy youth pulled further and further into herself.

At age 12, Strout began running away from home — and getting into trouble. At age 13, she tried to commit suicide.

In February 1983, Strout was admitted to John Umstead Hospital, a state mental hospital, for

But the running away did not stop. Green House counselors noted that Strout appeared to be purposely jeopardizing her weekend visits home.

Just before her discharge — after the police had picked her up after running away yet again — Strout finally revealed the incestuous relationship between herself and her brother Bill.

The charges were the second and final entry in Strout's Social Services file.

On Dec. 21, 1983, Somers and Montague informed then-District Attorney George Hunt that they had "received a report on Nov. 9 that Strout's 16-year-old brother had engaged in intercourse with her on six to 12 occasions over a year or more, the last having occurred in August 1983."

The parents were not to be charged with neglect in the case because a non-caretaker had been the abuser and they "took action as soon as they learned of the incidents" to protect the child.

Mrs. Strout said that she had "suspected" the incidents but felt her daughter had not been an innocent victim of her son's advances. "It didn't surprise and it wouldn't surprise me if Angela is the one who instigated everything. You know, she started her periods at 11, she matured early on."

Despite her contention that Strout was promiscuous, however, Mrs. Strout said she was repulsed by her son's actions. "I couldn't even look at him for two months, it made me physically sick."

Although the son freely admitted he raped his sister and encouraged his younger brother (the couple's own child) to make similar advances, a police investigation requested by DSS was closed after six weeks.

"We closed the investigation because the family was receiving counseling," said Graham Police Chief Raymond Perdue who, at that time a captain, handled the case.

Bill, Angela and the rest of the family received counseling for less than two months. The case was closed on Dec. 31, 1983.

* * * * *

BUT FOR Strout, the case could not close — she relived its details every day.

Although the episodes of sexual abuse had been halted, a host of other problems remained. Strout sought refuge in drugs and alcohol.

After a banner year as a freshman in high school, the young woman was removed from her special classes and entered her sophomore year in the school's mainstream.

Before the end of the fall semester, she learned she was pregnant.

Her adoptive mother, who expressed "overexcitement" at the teen-age pregnancy, according to her high school teacher, urged the young woman to drop out of school to have the child.

Fryer, who had taken a special interest in Angela's situation, suggested Strout come to school in the mornings and care for the child or work in the afternoons. "But her mother wanted her to quit," she said.

In the fall, when Strout returned to school after Matthew's birth, Fryer began to notice signs of drug abuse and hints that there was trouble at home.

Three months after the baby was born, Strout was admitted to Alamance County Adolescent CareUnit for drug and alcohol rehabilitation. Struggling to survive on her Domino's Pizza salary, she signed temporary custody of her child over to her adoptive parents.

* * * * *

IN THE PAST year Strout has seen the child twice. The last time she claims she was beaten

tried to commit suicide.

In February 1983, Strout was admitted to John Umstead Hospital, a state mental hospital, for intensive therapy.

• • • • •

IT WAS on visits home during her four-month stay at John Umstead that Strout said she was first raped by her older brother, Bill, also an adopted child.

After the first episode, the staff at John Umstead saw a marked change in the adolescent's behavior. She became more withdrawn, showed signs of aggression after her visits home and repeatedly tried to sabotage her weekend pass privileges.

In fact, when Strout was released from the facility in June 1983, she was picked up by police a week later trying to "run" back to Butner.

This time, Alamance Youth Services stepped in to suggest that Strout be permanently removed from the home. John Monroe, a patient therapist, and Mary Berman, a child psychiatrist, at John Umstead, recommended that Strout be placed in either a permanent or temporary group home.

The Strouts opted for the Green House in Durham, a temporary placement where she and the entire family could receive counseling.

• • • • •

IN THE PAST year Strout has seen the child twice. The last time, she claims, she was beaten during the visit, suffering fractured ribs and abdominal injuries. Her parents deny this report and point to the obvious good health and high spirits of the small boy.

"It's like day and night," said Mrs. Strout of the difference between Matthew and his mother. "But there's a streak of that Eskimo stubbornness in him too," her husband added.

Strout, who says she has always "looked different" and "felt different" from her non-native adoptive family, said she is now prepared to help provide Matthew a life with his own people.

For more than a year after the child's birth, Strout lived her life aimlessly, moving from job to job, adding to her criminal record charges of driving while impaired and driving without an operator's license.

But now, she stresses, she has pulled her life back together. She works third shift at Annedeen Hosiery and lives in an apartment in Graham.

She has looked into the past — she has taken responsibility for her own actions and come to terms with the actions of her family.

Now she is looking to the future. She wants her son back.

• Abuse

Continued from page 1B

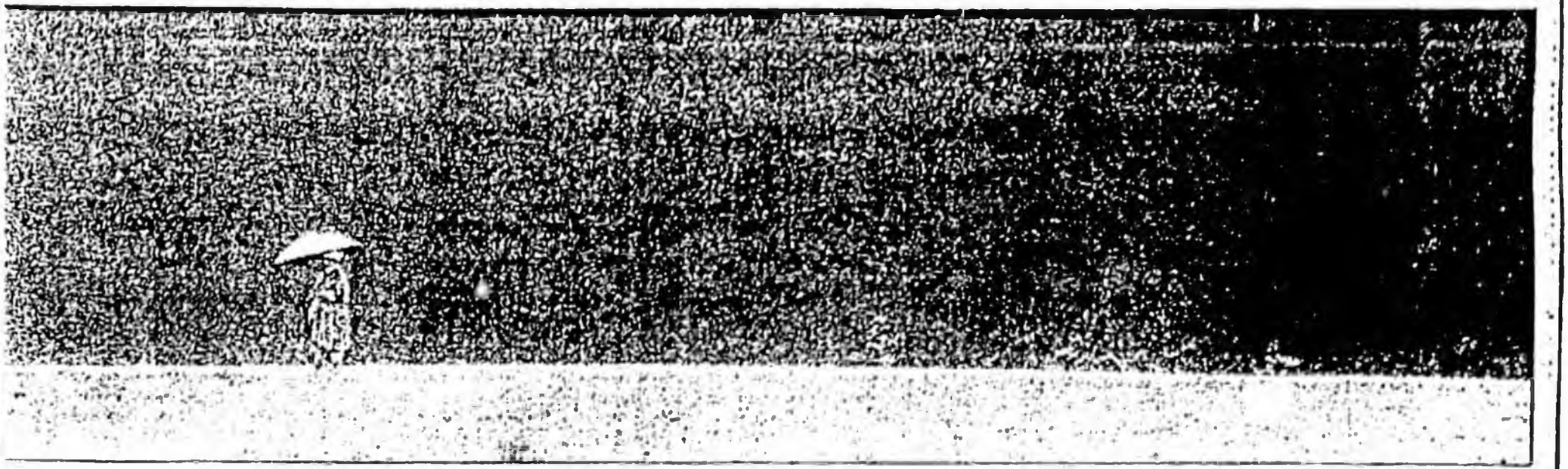
The problem in determining sexual abuse, Perrenoud said, indicating the sensitive another sign of problems in the

...ree during Logan, who played the hostess, served cookies to Iman Wilkerson, 7, Heather McSwain, 6, and Erin

er course ... just how to conduct themselves in a nice manner," Sharpe said.

A case last week in U.S. District Court illustrates the

(See Drugs cases, C4)



Rob Brown/News & Record

GREENSBORO NEWS + RECORD OCT. 1, 1989

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...e than its share. Researchers ... 200 pounds of sulfur dioxide per ... fall each year on the peak, the ...hest point east of the Mississippi ...er.

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(See Acid rain, C2)

Angela Strout
Worries about son

Teenager battling parents for custody of her own child

By TIM BASS
Alamance Bureau

GRAHAM — Angela Strout has fought with her adoptive parents for years. This time, it's for keeps.

Strout, 19, and her parents are entrenched in a court battle over who will have custody of her 3-year-old son, Matthew Lewis Strout.

Her parents gained custody of the boy in January 1987 when Angela Strout was hospitalized for drug and alcohol abuse. The young woman said she had not intended to give up her son permanently, and now she wants him back. She fears the boy is in danger of the same physical and psychological abuse that her counselors say she suffered at home.

"It's a fight, it's a family feud," the soft-spoken Strout, who is called "Angel," said in a recent interview. "I don't hate them. I just wish they'd do what's right."

Angel Strout is one-fourth Indian and one-fourth Eskimo, and her case has caught the eye of her native tribe in the village of Ruby, Alaska. A lawyer representing the tribe has joined the case, telling Alamance County District Court that taking custody from Angel Strout violated the federal Indian Child Welfare Act.

Her adoptive parents, George and Lynda Strout of Graham, declined to comment on the case Friday, citing the advice of their lawyer.

Angel was born Jan. 1, 1970, in

(See Custody, C3)

Strout was in the Air Force. The Strouts already had one adopted son, Billy, who was 2. In 1976, the couple had a child of their own, Kenny.

George Strout retired from the Air Force about 1980, and the family moved to Burlington. Lynda Strout's parents live in Graham.

Angel Strout's mental health records show scars of abuse and trauma. They state that she felt rejected by some family members who saw her as racially inferior. The records contend that she was sometimes beaten with a belt, and a social worker reported her father once said "he had gotten mad at Angela and slapped her around because she was banging the dishes around in the kitchen."

A man broke into the family's house and tried to rape Angel when she was about 11. She fought often with her brothers.

According to reports filed by - cial workers and mental health counselors, Angel told them that a male relative raped her six to 12 times between late 1982 and August 1983.

Angel ran away repeatedly, only to be found by the police and returned home. The family moved to Graham, but the problems continued. Trying to escape the tension, Angel drank beer and smoked marijuana.

She cut her wrists, prompting months of medical and mental treatment at hospitals, a group home in Durham, the Alamance County Department of Social Services and the county mental health departments in Alamance and Durham. During this treatment, she told counselors of the sexual abuse.

The accused male relative, not Angel Strout's adoptive father, admitted to the attacks during an interview with a social worker, according to Angel Strout's records. In a letter dated Dec. 21, 1988, Donna J. Somers, an Alamance County social worker, told then District Attorney George Hunt of the allegations but recommended no criminal action because the family agreed to counseling.

Matthew was born June 21, 1986, when Angel was 16 and unmarried. In October, George and Lynda Strout asked for temporary custody of the boy.

Angel consented while she was receiving treatment for drug and alcohol abuse at Alamance County Hospital Jan. 22, 1987.

"I was in the hospital. I didn't have a job, I didn't have any way of taking care of him," she said.

On June 10, 1987, District Court Judge W.S. Harris Jr. gave the Strout couple sole custody of Matthew.

[illegible] Churches will pass the plate today on behalf of North Carolina victims of Hurricane Hugo.

Members of the council's Interfaith Disaster Response Committee were assessing the damage last week in Mecklenburg, Gaston, Union and other western counties whipped hard by Hugo's devastating winds.

In the coming months, committee members will identify poor families who slip through the cracks of aid from the government, Red Cross and private insurance companies, said Greensboro resident Mike Aiken.

"[illegible] pince a month or two months after the disaster," Aiken said. "That's finding where the holes in the services are, finding those people and getting the funds and resources to them at a time when the excitement level of the public's response has waned."

Aiken, who toured Charlotte last week, said he was surprised at the extent of the damage. His committee met by candlelight Wednesday night in a Charlotte church.

In some of Charlotte's poorer neighborhoods, he saw huge trees fallen on rental houses, splitting them in two in some cases.

The Interfai Committee wr the wake of H rippod through lina, killing 84 tee raised $35 of that disaster

Hugo is the North Carolin The committee forts and raise math of the N does that hit th more recently, that damaged ham, Monroe,

got a part-time job and paid her parents $25 a week in rent.

She left the house, and Matthew, for good in August 1987 after another argument with her mother.

"Of course, it was a non-stop thing," she said. "We argued so much, I don't know what we argued about."

Her quest to regain custody of Matthew began when she met Larry Bush in 1987 when the two worked at a Bojangle's restaurant in Graham. Bush, now 35, of Elon College befriended the teen-ager and began searching for ways to help.

After Angel turned 18, she obtained her mental health records, which documented her troubled family life. She and Bush tracked down her natural mother in Washington state, and they contacted her native Indian tribe in Alaska.

Michael Walleri, a lawyer representing the Tanana Chiefs Conference in Fairbanks, has asked Alamance District Court to let him intervene in the custody case. In court records, Walleri said the case shows "wholesale violations" of the Indian Child Welfare Act, which aims to keep Indian families together.

"Taken together, the Strouts have displayed racial stigmatization, a failure to protect, encouragement of deviancy and active physical abuse of one minor tribal member entrusted to their care," Walleri says in court records. "There is no indication of reformation or rehabilitation to ensure against similar treatment toward Matthew."

One of Walleri's associates, Mike Smith, said a hearing on Walleri's motions is scheduled for Nov. 14.

Angel Strout, who works full-time at a sock-manufacturing plant in Burlington, said she wants to regain custody of her son and move to Washington state.

"I want to win, but it's up to the judge," she said. "My intentions are to win, but it's just the way I have to do it that I don't like."

Seven injured in collision

THOMASVILLE — Seven people were injured about 10:45 a.m. Saturday in a two-vehicle collision in Thomasville, police said.

Mary Pullum tried to stop her Ford truck on Liberty Drive when the brakes failed and the truck veered left of the center line, colliding head-on with a car driven by James Henderson.

Pullum and two passengers in her ck were injured as were Henderand three passengers in his car, said.

masville police did not know y night whether any of he accident had been wear-

Angela Strout

Tribal council's support aids Angela Strout

EDITOR'S NOTE: The recent deaths of children attributed to child abuse has both horrified and confused residents of Alamance County and surrounding areas. What follows is the third of a three-part series examining one victim's tragic story, the tangled web which snags efforts by Social Services and what lies ahead.

By RUTH SHEEHAN
Staff Writer

It may be too late to help Angela Strout, but it's not too late to help her son.

Or so hopes James Taylor, a member of the Cook Inlet Region tribal council in Anchorage, Alaska, who is working to have Strout's 2½ year-old son Matthew removed from the home of the Eskimo Indian woman's non-native adoptive parents.

The home is the same one in which Strout, now 18, says as an adolescent she was beaten by her mother and raped by her older brother. It is the home from which Strout frequently ran, only to be apprehended by the police and returned to the family which considered her an outsider.

"When you see a child running away at 10, 11 or 12 years old, you don't continue to put the child back in the home where there are all the problems. And you certainly don't put her child in that same environment," Taylor said.

Several months ago, Strout and her spokesman, Larry Bush, contacted Taylor to enlist his help in their effort to have Matthew taken from this environment.

Armed with the Indian Child Welfare Act, Taylor says they came to the right place.

The act, passed in 1978, gives tribal councils, such as the Cook Inlet Region council, the power to remove children of blood members of their tribes from non-native foster homes, such as the Strouts'. This power, as outlined in the act, supersedes the mandate of federal, state and local governments.

For Angela Strout, tribal identification No. 07-140-307220, the act may be the only way she will ever regain custody of her son.

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IRONICALLY four months after Matthew's birth in June 1986, a temporary protective order first granted custody of the child to the Strouts.

Noting that "Angela Yvette Strout has previously suffered from emotional disturbance and has previously been hospitalized for emotional disturbance," the court order cited her adoptive parents as the "fit and proper persons to have custody."

The Strouts have retained "temporary custody" ever since.

At the time of the original court order, Angela Strout had begun drug and alcohol rehabilitation. In previous years, she had been arrested for a variety of misdemeanors, including driving while impaired, shoplifting and breaking and entering a motor vehicle. On several occasions, she tried to take her own life.

On the surface, Strout appeared anything but the ideal mother. Indeed, at age 17, she was scarcely more than a child herself.

See TRIBAL / 12B

• Tribal

Continued from page 1B

But beneath the surface are the stories that the young woman has only recently been able to tell—stories of physical, emotional and sexual abuse.

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"ANGELA'S CASE is not that unusual," said Taylor, referring to Strout's personal history. "What we're finding is that a lot of children who were adopted and are living away from the reservation are having serious problems adjusting."

For instance, he said, native children adopted by non-native families have a 50 percent higher suicide rate than their peers who are raised on the reservation. "Given the fact that the suicide rate on the reservation is already higher than that for the rest of the population, you know there's a problem.

"They want to know who they are, what their roots are. They are made to feel different, they feel strange. They don't know who they are but they know they're different," Taylor said. "That's why the law (the Indian Child Welfare Act) came into being — to give people back their identities."

To do so is Taylor's hope for Matthew Strout.

Taylor admits that while "the ultimate goal is to reunite Angela and her son," Strout may not yet be ready to handle the difficult task of being a mother to the child.

"We are looking for the welfare of that child," Taylor said. "And there's no way around it, that child must be placed with a member of the tribe, a member of his larger family."

Taylor would like to see Strout and her son both welcomed into the tribe and believes he has found a way to do so — through Angela's natural mother.

Taylor located the mother several months ago, only to find that the mother, who lives just outside of Seattle, Wash., had been searching for her daughter as well. She has offered to take both her daughter and grandson into her home.

"Regardless of the fact that the Strouts are legally Angela's adopted parents, they are not related to Matthew at all. We hope to have the child taken out of the home and given to Angela's natural mother," Taylor explained.

"Just because her child was adopted does not mean it is any less a member of the tribe. Under the Indian Child Welfare Act, the first choice is always biological. It is the law of the land."

Taylor said that after a "home-study," a determination of Strout's natural mother's fitness as a parent, he will ask the local courts to rescind the Strouts' temporary custody of Matthew.

Although his office has been at work on the case for more than a month, Taylor said they have been hindered by time zone differences and "an inability to determine just who is involved in the case on this end.

"Alamance County officials [illegible] they have made promises that they have not shown themselves willing to live up to. I have talked to Judge Kent Washburn, Donna Somers of the Department of Social Services, Al Singer of the Durham Child Advocacy Committee. Every time I thought I had found the right person I found out that I had to go to another person.

"Well, that's gone on for weeks. I finally found out that none of the people I've talked to so far, even the ones who thought they could, can help."

Frustrated, but far from defeated, Taylor continues his efforts.

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THE RESULT, Taylor predicts, will be the removal of Matthew from the Strout home. But he cannot say when such action might be taken.

After a home study is completed, Angela's natural mother plans to come to North Carolina to retrieve the child. "If we have to remove the child forcibly, we'll call in the police. If it's an amicable agreement, the grandmother will just come in and take the child," Taylor said.

"I've heard there's going to be a fight. They can fight it, but they'll lose."

At that time, Angela hopes to join her son and natural mother. First, she must convince the courts to allow her to transfer her probation from North Carolina to Washington.

She said she is eagerly awaiting some action in the case. She and Bush are physically, emotionally and financially spent, she said.

Taylor said he hopes to gain the county's cooperation in the next two to three weeks. In the meantime, Matthew will be allowed to remain in the Strout home.

"Why aren't we moving him? When you make a lot of moves, you can harm a child. As long as the spotlight is on and there is no real harm being done to the child, he doesn't need to experience the trauma associated with being moved about.

"I'm kind of leery of it, but there is no real danger that he'll be hurt excessively in the next few weeks. If he were to remain in the home permanently is [illegible] other story.

Referring to statements made by the Strouts about Angela's problems being related to her ethnic background, Taylor added, "When a family thinks that genetically Indians are flawed, it becomes a self-fulfilling prophecy. From what I know on this particular case, this would not be a good permanent placement for Matthew."

Custody case begins behind closed doors

By L.D. ASHMORE
Times-News

GRAHAM — Almost 20 years ago, an Eskimo-Indian baby girl was adopted by an Air Force couple in Anchorage, Alaska.

In an Alamance County courtroom Tuesday, she began proceedings against her parents to try and regain custody of her own 3-year-old son. Attorneys met in closed-door discussions for about three hours and were scheduled to return to court this morning.

More than just a custody case, the suit is clouded by Angela Strout's alleged history of sexual and physical abuse in her adoptive home along with her status as a member of a native American tribe.

In September, the Ruby tribe of Alaska intervened in the suit under the 1978 Indian Child Welfare Act, saying 3-year-old Matthew Strout should be returned to his natural mother.

Angela has told counselors while living in the Strout home, she was raped several times over the course of a year when she was about 13 by her adoptive brother Bill. She attempted suicide once and received therapy in state group homes for adolescents.

The Department of Social Services investigated the Strout home, but ended their involvment after the family attended one counseling session, according to Angela Strout.

Later, she committed a few minor crimes that landed her on probation. But since leaving the Strout home she has supported herself, at times working two jobs, and kept a clean record.

Michael Walleri, an attorney representing the Ruby tribe, said in court documents the Strouts have displayed racist tendencies, publicly blaming Angela's "stubborn" traits on her Eskimo heritage. Further, Walleri asserts they failed to protect one tribal member entrusted to their care, and the tribe seeks to prevent the same upbringing for Angela's son.

Walleri contends the court order that gave custody to the Strouts violated the Act and Matthew belongs with his mother.

Tuesday, attorneys for both sides said District Court Judge J. Kent Washburn was given voluminous information on the controversy, including the Indian Child Welfare Act and several state's appellate court decision in similar cases.

Phillip Moseley, attorney

Please see CASE/A2

Times News (Burlington)
Nov. 15, 1989

Case

Continued from A1

for George and Lynda Strout, says the Act does not apply to this case, but reserved his argument for the open court proceeding.

Wayne Abernathy, Angela's attorney, says the Act is applicable, but will not be the sole issue in the case. He said Angela's history of abuse while in the Strout home will be a part of the controversy as well.

Walleri said Tuesday where a tribe has established blood ties as they have done with Angela, state courts are bound to recognize the authority of the Act and give the child to the natural parent.

Indian mother wins child custody case

By L.D. ASHMORE
Times-News 11-16-89

GRAHAM -- Intervention by an Alaskan Indian tribe Wednesday ended a struggle between a teen-age mother and her adoptive parents over 3-year-old Matthew Strout.

Wednesday, Matthew's mother, Angela, signed a consent agreement with her parents that will gradually restore her parental rights by April.

What set the case apart and may have played a significant part in the settlement were 19-year-old Angela's bloodties to the 200-member Indian tribe in Ruby, a small village in the Alaskan interior.

Under federal law, native tribes have authority to preserve families by claiming custody rights to children borne to tribal members. Michael Walleri, a tribal attorney, intervened in the suit in September and flew from Alaska to appear in court this week. The tribe said the 1987 order giving temporary custo-

Please see CHILD/A3

Child

Continued fro

u[illegible]der a 1978 federal act design-
e[illegible] to prevent the disintegration
o[illegible] American Indian families
a[illegible]d their culture.

[illegible]fter studying several states' a[illegible]ppellate rulings Tuesday n[illegible]ght, District Court Judge J. K[illegible]nt Washburn agreed with W[illegible]lleri, based on his finding th[illegible]t the Strout's custody ar[illegible]ounted to foster care, which fa[illegible]ls under the jurisdiction of th[illegible] Act.

The earlier order must be set as[illegible]de as being in violation of th[illegible] Indian Child Welfare Act," W[illegible]shburn said.

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THE CONTROVERSY could ha[illegible]ve made a long, bitter case, W[illegible]shburn said. He credited bo[illegible]th sides with agreeing to rec[illegible]oncile on some points and con[illegible]centrate on the best solution for M[illegible]atthew.

[illegible]ttorneys stepped over many of[illegible]hose issues in negotiations he[illegible]d outside the courtroom — in[illegible]luding Angela's history of ab[illegible]use in the Strout home. She to[illegible]d counselors she was sexually [illegible]bused by her adoptive brother. When she was 13, she attempted suicide by cutting her w[illegible]sts, and later had several st[illegible]ys in adolescent recovery c[illegible]nters.

[illegible]n court papers, Walleri said the county Department of Social Services had documentation about Angela's problems at home, yet failed to recognize her family life was not getting better. Walleri said the tribe feared Matthew would not be protected by DSS.

Angela has been convicted for m[illegible]inor crimes. And her past included some experimentation with drugs and alcohol. But since leaving her adoptive parents' home, she has at times worked two jobs and now works at Annedeen Hosiery Mill. She is soon scheduled to be moved to the most lenient form of probation, said her attorney Wayne Abernathy.

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FOUR MONTHS after Matthew was born in 1988, the "There was a troubled child who was 16 and had given birth out of wedlock," said Phillip Moseley, attorney for Angela's parents. Angela intended to give the child up to the Department of Social Services, and the Strouts took custody instead, Moseley said.

"Every safeguard for the child that was known was made, both for Matthew and for Angela," Moseley said.

"It certainly appears the Strouts proceeded in good faith in the action in 1986," Judge Washburn said. "However, I don't believe anybody was aware that the Indian Child Welfare Act might pertain to this case."

"The law is fairly obscure," Washburn said later. And federal law is not normally applicable in custody hearings. "Domestic law is just that," he said. "Not only in the sense of the family, but in that usually it's an issue uniquely covered by state law."

"This appears to be the first instance of invocation of the Indian Child Welfare Act in Alamance County," Washburn said

Moseley challenged tribal intervention, arguing that although court documents submitted by the tribe list Angela's father as Athabascan Indian and a tribal member of the Village of Ruby, his name is not listed on the birth certificate, and said there is no record of his acknowledging paternity.

"How can they certify the blood quantum and eligibility?" Moseley asked. He also questioned what cultural ties the tribe could establish, nearly 20 years after Angela's adoption.

"There is simply and has never been any tribal contact . . . other than the mere fact of blood quantum," Moseley said.

Walleri said the lack of contact with the tribe was not Angela's fault.

"And as much as the Strouts may wish to parent Matthew, they are not his parents," Walleri said. "The outplacement of an Indian child is what [illegible] was the legislative intent. Shall we give the problems Angela experienced to her son Matthew?"

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FOR ANGELA, Wednesday's settlement means she has a chance to make sure her son's life is different.

"It's been about two years now," she said. "I had to find my records — every last little piece of paper I could find." Occasionally goading her along and pursuing government officials via telephone was Larry Bush, whom Angela met in court.

Before she left home, Angela said she tried to talk her parents into letting her have her son, without success.

As Angela turned to walk from court, Lynda Strout called her over in sight of several reporters, wrapped her elbow around Angela's neck and patted her hair as she spoke. Angela said later she's on "neutral ground" with her parents now. The Strouts had no comment Wednesday.

As part of the settlement, she will attend parenting classes and Children and Youth Services will help with day care for Matthew.

As a member of the Ruby tribe, Angela is entitled to scholarship assistance and other benefits from the tribe. Funds for traveling to Alaska should Angela decide to get closer to those benefits are available, Walleri said. At times an A and B student in high school, she said she intends to complete her GED before leaving.

As the adoptive parents of an Alaskan native, the Strouts received "substantial" funds from the Alaskan Native fund from 1971 to 1981, Walleri said. A smaller allotment was recently changed to go directly to Angela, he said.

Despite having to search out and document events that she'd rather forget, Angela said having her son back was worth the ordeal. Waiting outside the courthouse Tuesday, Angela said she's anxious to get started with her own life and get out of headlines and newscasts.

"When all this is over, I'd like to scratch all my records," she said. "I'll just have a big bonfire."

11-16-1989

Greensboro News + Record

North Carolina

Mom gets son back by her Indian rights

Initial custody violated law, judge rules

By TIM BASS
Alamance Bureau

GRAHAM — A part-Indian, part-Eskimo woman won a 2½-year fight for her son Wednesday when a District Court judge ordered their reunion because original custody proceedings violated the federal Indian Child Welfare Act.

Angela Strout, 19, of Burlington, was improperly separated from her son, Matthew Lewis Strout, 3, when custody of the boy was given to her adoptive parents in 1987, according to the ruling by Judge Kent Washburn.

Washburn said the boy's grandparents, George and Lynda Strout of Graham, must give up the custody they received when Angela Strout was hospitalized for drug and alcohol abuse.

Angela Strout smiled and patted one of her lawyers as Washburn ordered that she receive custody of her son. Efforts to reach her after court were unsuccessful.

Lynda Strout said she was satisfied with Washburn's ruling and expressed hope that the family's differences would end.

"From the beginning, we wanted to be Matthew's ... grandma and grandpa," Lynda Strout said outside the Alamance Courthouse Annex. "I think if given a chance, Angela and her daddy and I can get it together."

Both sides agreed to a gradual placement that will give Angela Strout custody of Matthew by April 2. After that, the boy's grandparents will be allowed to visit him Wednesday nights and one weekend a month.

Phillip Moseley, George and Lynda Strout's lawyer, said the couple had not decided whether to appeal the ruling.

Washburn's ruling is the apparent end to Angela Strout's self-described "family feud" with her parents over who will have custody of the boy born out of wedlock when she was 16.

(See Custody, A11)

Angela Strout
Battle ends in her favor

Custody From A1

Angela Strout gave up custody of Matthew when she was in a Burlington hospital. But later she changed her mind, saying she never intended to forfeit custody permanently. She said she wanted the boy back because she feared he was in danger of the same physical and psychological abuse her counselors say she suffered in the Strout home.

Reports filed by Angela Strout's mental health counselors and social workers say she told them that a male relative, not her adoptive father, raped her six to 12 times between late 1982 and August 1983.

The reports also state that she was beaten and that some family members saw her as racially inferior. Angela Strout is one-fourth Indian and one-fourth Eskimo. The rest of the family is white.

Angela Strout said the turmoil at home prompted her to run away repeatedly. She once attempted suicide, spent time in emotional therapy and had brushes with the law.

Washburn said that even though Matthew's original custody proceedings followed state law, they violated the Indian Child Welfare Act, a federal law that aims to keep Indian families together.

"I don't believe anybody was aware that the Indian Welfare Act might pertain to this case at that time," Washburn said. "I believe that the Act applies, even in an intra-family transfer of custody. ... It's a difficult question, and one I had to struggle with."

Michael J. Walleri, a Fairbanks, Alaska, lawyer representing the Ruby Indian tribe, said the federal law applies to the case because of Matthew's Indian heritage.

Walleri said the tribe was not notified of the first custody proceedings; Angela Strout was not appointed a lawyer; and no one testified that Matthew's life could have been harmful if he remained in his mother's custody.

"The Indian Child Welfare Act was passed to primarily protect the connection between Indian children and their tribe, and between Indian children and their families," Walleri said. "We believe in this case that both connections ... are threatened."

Moseley argued that custody was transferred properly at a time when Angela Strout was a "troubled child" and could not "exercise sufficient care and supervision" of Matthew.

"Every safeguard for the child was made, both for Angela and for Matthew," Moseley said.

As he ordered the custody change, Washburn told Angela Strout: "You've got something that is not a piece of property. You've got a human life with a potential to be a bank robber or the president of the United States."

Guest editorial for the Tundra Drums by Mary C. Pete

I have serious concerns about House Bill 414, entitled "An Act relating to notification of adoption of Indian children," sponsored by the Governor. If enacted, it will violate basic rights of Alaska Native women. It will remove the right of pregnant Native women to request confidentiality when they choose to put their child up for adoption to private agencies and non-tribal parties. Pregnant Native women will be required to notify their tribe in cases of voluntary adoption, in case the tribe wants to be party to the placement of the child.

The bill is well-intended; it is an extension of the federal Indian Child Welfare Act (ICWA) designed to protect tribal rights regarding adoption of Indian children. I believe ICWA was important and necessary to protect Indian tribal rights to have their children raised in their own society to learn their own culture. As an anthropologist, I served as expert witness in a cultural adoption case which appealed to ICWA. However, I do not think this bill is warranted.

I am most familiar with Yup'ik and Inupiaq cultural practices, but the limited cases involving Indians of which I am aware, support these statements. Most Native women choose to have their relatives adopt their children. They want to be able to watch their children grow up in their own society and learn their own culture. Their families welcome new members; children are valued and, ideally, nurtured. Adoption is a common practice for a variety of reasons, from compassionately providing children to barren relatives, to taking in young orphaned relatives. In most cases, adopted children know both adoptive and natural parents; it provides a wider circle of valued relatives and relationships to maintain or activate in times of need. I myself was adopted because my parents were barren and I know both my families.

This bill would not affect the women or their children who follow these culturally prescribed adoptions. It will affect Native women, who for whatever reason, have not maintained ties with their relatives. They may not feel socially or culturally bound to follow tradition. This bill will force them to notify their tribes that they have children to put up for adoption.

As chair of the Alaska Council on Domestic Violence and Sexual Assault, I have to be aware of the known magnitude of domestic violence and sexual assault problems and services victims have or need in the state. Alaska Native women comprise approximately 4.6 percent of the Anchorage population, yet they account for almost one-half (44 percent) of its reported rape victims. I would suspect that the unreported rape

figures are substantial, and that Juneau and Fairbanks statistics would not be much different. This bill will affect Native women who give up children resulting from rape to private agencies for adoption so that they would not have to be reminded of that violation to themselves. If the tribe chooses to place the child of a rape victim in her home village, the phrase "adding insult to injury," to me, does not begin to describe the injustice of that situation. I know of several Native women who said if faced with that prospect, would never be able to go to their home villages again.

One argument offered to support the bill is that it would be therapeutic for Native women and their families if the women had to inform their families that they were pregnant. Under this bill, the state would take this task upon itself, against the woman's wishes. It is true that pregnancy out of wedlock does not have as much negative stigma attached to it among certain Native groups in particular communities as it seems to among certain non-Native groups. I interpret that the underlying value to be nurturing to relatives, especially those in need, to be a contributing factor in this difference in reactions. However, the individual woman is in the best position to evaluate the reaction of her own family to her pregnancy. I do not think the state has any business here.

Proponents of the bill have attacked its detractors with accusations of racism, viewing children as women's property, or, in my case "becoming westernized." They claim that "a Native woman truly in touch with her culture would think that the tribe's right and child's rights outweighed the rights of the woman." I was raised Yup'ik; the Yup'ik language was the first language with which I formed and spoke my thoughts and I disagree that my rights should bow to my tribe's if I wanted confidentiality regarding adoption of my child.

This is not only an Alaska Native women's issue -- it involves all women. It is unsettling to be accused of racism when you know you are not. I know non-native women who oppose this bill but feel they cannot get involved because of the threat of racism. Granted the stakes of cultural and tribal rights do not apply, but think of how outrageous it would be if the bill applied to non-Native women, as well. Imagine informing the city council of Modesto, California that there was a women from there who now resides in Anchorage or Chicago, who will have a child put up for adoption. The few Native women who know about the bill and support it should not stop non-Native women from opposing it. Did all women stop pushing for the existence of the Alaska Women's Commission because a few women did not think it was a good idea?

Supporters of the bill say that the opposing position equates children as property, to be bought, sold, or disposed of as the mother chooses. I cannot follow the logic to arrive at that conclusion. I would suspect in most cases to which the bill would apply, only the mother is involved in decisions regarding her pregnancy and the rest of her life; the father is not available to be consulted. Speaking of fathers, what about children of non-Native women fathered by Native men? I think this bill equates Native women as manufacturers of tribal members; vessels to increase tribal rolls, whose rights can be trampled upon.

Proponents also point to measures in the bill that would assure confidentiality of the women. They become incensed that those opposing the bill would question whether tribal officials, who usually are men, could keep such information confidential. I myself never viewed the issue of whether tribal officials could keep a secret as important; good for them if they can. However, there are many small communities where everyone knows everyone and people can figure things out. But, again, that's beside the point of taking away rights of women.

Proponents of the bill offer that the state would be honoring tribal and cultural rights. I can think of many, many instances when the state could have recognized tribal and cultural rights (and still can, and I wish they would) to benefit both Native men and Native women, but instead these potential rights were never realized. Why choose this instance to recognize tribal rights, and simultaneously victimize Native women? Because the most vulnerable put up the least fight.

If the problem is private adoption agencies exercising undue pressure on Native women to give up their children for adoption, why not pass a law requiring private adoption agencies to comply with ICWA requirements? If the problem is Indian Health Service doctors coercing Native women to request anonymity in order to provide adoptive children to private adoption agencies, investigate these charges. These are more direct ways to solving the problems, without creating a state-sanctioned method of violating women's rights. They would require the state to deal with much more powerful parties than vulnerable pregnant Native women, but I think the state can rise to the occasion.

Hopefully, the women who will be affected by this bill are few. But they do exist, and they need help. To reiterate a few points: this is a well-intended bill, but it can result in gross invasions of Native women's rights to privacy. Legislation, as do many written and codified things, attain a life of their own: they outlive their creators, the people with good intentions. We should look at how the bill will be applied to cases it was not designed to address. Too many times, women, or any

vulnerable group, pays the price for solving social problems. In this case, it is Alaska Native women. This Alaska Native woman objects and urges others to express their objection as well.

STEVE COWPER
GOVERNOR

CC HB 414

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 12, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to notification of adoption of Indian children. The bill requires that an Indian child's tribe be notified of the hearing on a petition for adoption, of a consent given, or a relinquishment taken, involving an Indian child. The bill was requested by the Department of Health and Social Services to implement the federal Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901 -- 1923. Although the bill applies to Alaska Natives generally, the word "Indian" is used, in reliance on the bill's definition of "Indian tribe" in proposed AS 25.23.240(14), tracking the ICWA terminology and definition. The definition of "Indian tribe" used in ICWA is also used here, making clear that the bill is not intended to recognize any tribal status other than as used in ICWA.

The Indian Child Welfare Act outlines the procedures to be followed by states in the case of adoptions of Indian children, and is designed to protect the cultural identity of Indian tribes while also emphasizing the relationship of the child to his or her tribe. In cases in which an Indian child is under the jurisdiction of the Department of Health and Social Services and the child is the subject of an adoption proceeding, the state notifies the Indian child's tribe so that the tribe can intervene if it considers intervention appropriate.

However, a recently adopted Alaska Supreme Court Rule, Adoption Rule 10(e), states that in cases of a voluntary consent to adoption the tribe does not need to be informed of a pending adoption of an Indian child if the parent requests anonymity. (See also Catholic Social Services v. C.A.A., ___ P.2d ___, Op. No. 3534 (Alaska, Dec. 8, 1989).

This lack of notice violates the spirit of the Indian Child Welfare Act by making it difficult for the tribe to exercise its right, early in the process, to become a party to the adoption.

The bill would change existing law so that, in all cases involving adoption, consent, or relinquishment, an Indian child's tribe would be notified, with an added provision that a parent's request for anonymity would be honored in the notice. Consequently, notification provisions regarding such private adoptions would be the same as those currently used by the Department of Health and Social Services.

The most serious problems with placement of Indian children in non-Indian homes occurs in private placements. Passage of the bill will allow better contact by Indian tribes, and thus encourage better placement practices by private adoption agencies. Early intervention by Indian tribes may also help to prevent lawsuits at later stages in the adoption process.

I urge your support and passage of this important legislation.

Sincerely,

Steve Cowper
Governor

No. 1

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 414
PUBLISH DATE: HOUSE 1/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Indian Adoptions

Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Department of Health & Social Services
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

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Opinion page

Guest Editorial

Proposed law would limit Native women's right

By Mary C. Pete

I have serious concerns about House Bill 414, entitled "An Act relating to notification of adoption of Indian children," sponsored by the Governor. If enacted, it will violate basic rights of Alaska Native women. It will remove the right of pregnant Native women to request confidentiality when they chose to put their child up for adoption to private agencies and non-tribal parties. Pregnant Native women will be required to notify their tribe in cases of voluntary adoption, in case the tribe wants to be party to the placement of the child.

The bill is well-intended, it is an extension of the federal Indian Child Welfare Act (ICWA) designed to protect tribal rights regarding adoption of Indian children. I beleive ICWA was important and necessary to protect Indian tribal rights to have their children raised in their own society to learn their own culture. As an anthropologist, I served as expert witness in a cultural adoption case which appealed to ICWA. However, I do not think this bill is warranted.

I am most familiar with Yup'ik and Inupiaq cultural practices, but the limited cases involving Indians of which I am aware, support these statements. Most Native women choose to have their relatives adopt their children. They want to be able to watch their children grow up in their own society and learn their own culture. Their families welcome new members; children are valued and, ideally, nurtured. Adoption is a common practice for a variety of reasons, from compassionately providing children to barren relatives, to taking in young orphaned relatives. In most cases, adopted children know both adoptive and natural parents; it provides a wider circle of valued relatives and relationships to maintain or activate in times of need. I myself was adopted because my parents were barren and I know both my families.

This bill would not affect the women or their children who follow these culturally prescribed adoptions. It will affect Native women, who for whatever reason, have not maintained ties with their relatives. They may not feel socially or culturally bound to follow tradition. This bill will force them to notify their tribes that they have children to put up for adoption.

As chair of the Alaska Council on Domestic Violence and Sexual Assault, I have to be aware of the known magnitude of domestic violence and sexual assault problems and services victims have or need in the the state. Alaska Native women comprise approximately 4.6 percent of the Anchorage population yet they account for almost on-half (44 percent) of its reported rape victims. I would suspect that the unreported rape figures are substantial, and the Juneau and Fairbanks statistics would not be much different. This bill will affect Native women who give up children resulting from rape to private agencies for adoption so that they would not have to be reminded of that violation themselves. If the tribe chooses to place the child of a rape victim in her home village, the phrase "adding insult to injury," to me, does not begin to describe the injustice of the situation. I know of several Native women who said if faced with that prospect, would never be able to go home to their villages again.

One argument offered to support the bill is that it would be therapeutic for Native women and their families if the women had to inform their familes that they were pregnant. Under this bill, the state would take this task upon itself, against the woman's wishes. It is true that pregnancy out of wedlock does not have as much negative stigma attached to it among certain Native groups in particular communities as is seems to among certain non-Native groups. I interpret that the underlying value to be nurturing to relatives, especially those in need, to be a contributing factor in this difference in reactions. However, the individual woman is in the best position to evaluate the reaction of her own family to her pregnancy. I do not think the state has any business here.

Proponents of the bill have attacked its detractors with accusations of racism, viewing children as women's property, or, in my case "become westernized." They claim that "a Native woman truly in touch with her culture would think that the tribe's right and the child's rights outweighed the rights of the woman." I was raised Yup'ik; the Yup'ik language was the first language with which I formed and spoke my thoughts and I disagree that my rights should bow to my tribe's if I wanted confidentiality regarding adoption of my child.

This is not only an Alaska Native women's issue—it involves all women. It is unsettling to be accused of racism when you know you are not. I know non-Native women who oppose this bill but feel they cannot get involved because of the threat of racism. Granted the stakes of cultural and tribal rights do not apply, but think of how outrageous it would be if the bill applied to non-Native women, as well. Imagine informing the city council of Modesto, California that there was a woman from there who now resides in Anchorage or Chicago, who will have a child to put up for adoption. I do not think the few Native women who are aware of this bill and support it should stop non-Native women from opposing it. Did all women stop pushing for the existence of the Alaska Women's Commission because a few women did not think it was a good idea?

Supporters of the bill say that the opposing position equates as property, to be bought, sold, or disposed of as the mother chooses. I cannot follow the logic to arrive at that conclusion. I would suspect in most cases to which the bill would apply, only the mother is involved in decisions regarding her pregnancy and the rest of her life; the father is not available to be consulted. Speaking of fathers, what about children of non-Native women fathered by Native men? I think this bill equates Native women as manufacturers of tribal members; vessels to increase tribal roles, whose rights can be trampled upon.

Proponents also point to measures in the bill that would assure confidentiality of the women. They become incensed that those opposing the bill would question whether tribal officials, who usually are men, could keep such information confidential. I myself never viewed the issue of whether tribal officials could keep a secret as important; good for them if they can. However, there are many small communities where everyone knows everyone and people can figure things out, again, that's beside the point of taking away rights of women.

Proponents of the bill offer that the state would be honoring tribal and cultural rights. I can think of many, many instances when the state could have recognized tribal and cultural rights (and still can, and I wish they would) to benefit both Native men and Native women, but instead these potential rights were never realized. Why choose this instance to supposedly recognize tribal rights, and simultaneously victimize Native women? Because the most vulnerable put up the least fight.

If the problem is private adoption agencies excercising undue pressure on Native women to give their children up for adoption, why not pass a law requiring private adoption agencies to comply with ICWA requirements? If the problem is Indian Health Service doctors coercing Native women to request anonymity in order to provide adoptive children to private adoption agencies, investigate these charges. These are more direct ways to solving the problems, without creating a state-sanctioned method of violating women's rights. They would require the state to deal with much more powerful parties than vulnerable pregnant Native women, but I think the state can rise to the occasion.

Hopefully, the women who will be affected by this bill are few. But they do exist, and need help. To reiterate a few points: this is a well-intended bill, but it can result in gross invasions of Native women's rights to privacy. Legislation, as do many written and codified things, attain a life of their own; they outlive their creators, the people with good intentions. We should look at how the bill will be applied to cases it was not designed to address. Too many times, women, or any vulnerable group, pays the price for solving social problems. In this case, it is Alaska Native women. This Alaska Native woman objects and urges others to express their objection as well.

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Judge rules Akhiok can't stop adoption

SANTA ANA, Calif. (AP) — A native village has no right to intervene in the adoption of a part-native baby whose mother has placed it with a Canadian couple, a judge ruled in an Alaska case.

Orange County Superior Court Judge Robert Polis said Wednesday the federal Indian Child Welfare Act does not give a village the right to intervene when a native parent is voluntarily putting a baby up for adoption.

Polis said at the beginning of the two-hour hearing that he intended to rule in favor of an Alaska village seeking custody of Jodi Argleben's baby, but reversed himself after hearing arguments.

He did say, however, that a village has the right to intervene when a government agency is ending a parent's rights because of abuse or neglect.

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Adoption

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Argleben, 19, of Cypress, a half Aleut single mother who was adopted by a white family when she was a toddler, selected a couple in Vancouver to raise her 8-month-old daughter, Rebecca.

But the village of Akhiok on Kodiak Island argued that federal law gives it the right to place an native child within the village if its mother puts the child up for adoption.

Argleben said she would rear the baby herself rather than surrender her to the the village where Argleben was born. Rebecca was smuggled into the non-native Vancouver couple's care in September and has remained there during the prolonged legal struggle.

Polis' decision surprised both sides.

"We didn't anticipate this," said lawyer Jack Trope, who represents Akhiok. "We thought we had a very strong position, and still do."

Trope said he will talk to village leaders about the possibility of taking the case to the state's 4th District Court of Appeal.

In an affidavit, tribal council President David Eluska said the village thinks Rebecca is "a part of us" and wants to offer her a life among her people, with their culture and history.

Argleben decided on a Canadian adoptive couple, who remain unidentified, after lawyers said she could avoid the Aleuts' opposition there. But the Aleuts went to court there and won, until a judge ruled in January that the case should be heard in U.S. courts.

Judge says village has no say in adoption

By CATHERINE GEWERTZ
Los Angeles Times

SANTA ANA, Calif. — In a surprise victory for a part-Aleut mother, a judge reversed himself Wednesday and decided that an Alaska village has no right to dictate who will adopt her 8-month-old baby.

The ruling by Orange County Superior Court Judge Robert J. Polis gave Jodi Argleben, 19, of nearby Cypress the right to choose who will rear her daughter, Rebecca. Argleben already has selected a couple in Vancouver, B.C., and smuggled the baby into their care in September. The baby has remained there during the protracted legal struggle over the adoption here and in British Columbia.

A final decision almost certainly will be delayed by appeals. But Argleben has sworn that she will rear Rebecca herself rather than surrender her to the Aleuts in Akhiok, the small village on Kodiak Island, where the teen-ager was born.

Argleben beamed as Polis announced his decision Wednesday. Later, she said simply: "It's great."

Jack Trope, the attorney representing the Aleuts, said he was so shocked by Polis' decision that he had not yet considered an appeal. But Argleben's attorney, Christian R. Van Deusen, said he expects the Aleuts to appeal.

Polis ruled Jan. 19 that the 1978 Indian Child Welfare Act gave the Aleuts the right to make sure Rebecca is placed with an Aleut family. The Aleuts had cited that law, designed to stem the breakup of Indian families and the loss of their customs and culture.

Polis said at the time that he made the decision reluctantly, because he felt that the law infringed on a woman's right to reproductive freedom by "reaching into her womb" and dictating who will rear her baby if she decides to give it up for adoption. But he said his personal objections did not make the law unconstitutional, so he had to follow it.

Faced with Argleben's request for reconsideration Wednesday, Polis initially indicated that he was inclined to stick by his deci-

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BABY: Judge reverses decision, says Kodiak village has no say in adoption

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sion. But one hour later, he changed his mind.

Polis zeroed in on a section of the law that says that Indian nations must be notified when an Indian child is being taken from its parents against the parents' will. But he noted that the law requires no such notice when an Indian child is voluntarily surrendered for adoption.

The judge reasoned that if Congress did not mandate notice to the Indians in voluntary adoptions, it "may well be that (Indian tribes) have no right to be heard" in those situations.

He said there is no question that Indian nations have been subjected to "crass racism and discrimination" by whites who felt that troubled life on tribal reservations entitled them to "drag off" Indian children and have them adopted by non-Indian families.

But the circumstances of Rebecca's adoption are not the ones contemplated by Congress when it adopted the Indian Child Welfare Act, Polis said. Rebecca has virtually no link to Aleut culture, since Jodi Argleben is only half Aleut and was adopted by a white family when she was 18 months old.

If the baby were being taken from her parents and an existing Indian community involuntarily, Polis said, his decision "would be quite different."

He also told Trope, the lawyer for the Aleuts, that he was troubled by the fact that Rebecca's Native heritage means her mother loses control over her adoption.

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Mary Van Nimwegen

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