

THE QUESTION OF BEST INTEREST

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In recent years the concern of Indian people with the status of child welfare services in their communities, both rural and urban, has greatly magnified. No longer are many Indian people willing to stand mute while various agencies and authorities exercise powers over the lives of Indian children and families, and the tribal community itself.

Hearings before the U.S. Senate Subcommittee on Indian Affairs in April 1974 were the first national public expression of concern by Indian people. While the statements and positions expressed at the hearings received broad attention from Indian people in the field, the larger society, for the most part, remains uninformed. Two years later, the overall picture remains the same. It is very clear from the experience of many Indian workers that the position and intention of the powerful non-Indian social services network in this country has not changed, nor does it appear that change is intended. This serves to complicate and frustrate the work in Indian child welfare. It serves to preserve an adversary position which has no place in the development of a healthy life design for an Indian child or any other child. It becomes clear that protecting one's ideological position remains more important than the preservation of life of a people through the safeguarding of their children.

The testimony of our tribal leaders and Indian child-welfare workers clearly demonstrated the ability of Indian people to care for their own. The statements lucidly revealed the intentional blocks that were placed in the way to prevent this from occurring. Many words were spoken, many tears were shed, many voices were broken with hurt. Yet the response has been minimal. It is difficult to understand how the cited tragedies of Indian children and their families have not moved a people to an expression of human caring.

Not one of the national child-welfare agencies, either public or private, was moved to respond. At best the words were not heard; at worst no attention was paid to them. The only moves of national scope were a request from Senator James Abourezk to the Association

on American Indian Affairs, Inc. to prepare an Indian child-welfare bill (The Indian Child Welfare Act of 1976 [S.3777], introduced by Senator Abourezk on August 27, 1976), and a resolution passed at the 1974 convention of the National Congress of American Indians, Inc. Other national Indian and non-Indian organizations remained noticeably silent.

Within the context of this national attitude and position another ominous block to good Indian child-welfare practice has reared its ugly head. Like other destructive and deceptive visitors to Indian country it is clothed in finery of good words and good intentions. It speaks to the best interests of the child. The position that the concern of the child is paramount in decisions made which effect his life is well-taken. The difficulty arises when the powerful decision-makers interpret this position only within the context of their own value system. The position as developed and interpreted provides the justification for the removal of Indian children from their families and tribes. It provides an opportunity for the decision-makers to look only at a small segment of the Indian child's life experience. It protects child-welfare workers who have not done a responsible job. It sets up a situation in termination of parental right hearings that makes it difficult to determine whose best interests are in reality being considered.

Too many Indian workers witness the rights of Indian parents being terminated because they received no help or encouragement in their rehabilitative efforts. It is heart-breaking to watch the volumes of case record notes being used against parents by workers and department attorneys whose attitudes are never questioned. Yet it is obvious from their own words that their prejudicial attitudes have influenced all of their contacts with the Indian client. This important aspect of the work which should be considered in any decision is overlooked. It appears the department's position is unassailable. After all, are not these people of good will who are concerned with the best interest of every child? It becomes the burden of the Indian family to prove in this "Catch 22" atmosphere that they love and can provide care to their child. But unfortunately the scales of justice have been weighted against them from the very beginning.

Indian children who are removed from their families are kept in substitute care for long periods before termination is sought. Their parents, like those described in the hearings, often do not know where their children are and, when they do, receive little or no help in the delicate practice of visitation. If their child is upset after return from a visit the behavior is seen as being caused by the uncaring attitude of the parents. The thought that the child is upset because he is again placed away from his parents is given little or no attention. The upsets are carefully reported by foster parents and recorded by caseworkers to

use as ammunition against the parents when the decision to terminate is made.

The upset behavior exhibited by the child is some of the most damaging evidence presented to the court. The department points out in terms that are not clearly substantiated that the visits with the parents are the cause for this behavior. The workers are not asked to explain how this disruption has gone on so long if they have, in fact, been working to reunite this family. The question of the child's best interest is transformed into a question of case management, and the workers then think that it is time to close this case by moving the child into "permanent" placement. The department's workers can then devote these same efforts to other cases; too many of which unfortunately involve Indian children.

The case planning for Indian children is biased from the beginning. Workers tend to place Indian children in non-Indian substitute homes where there is the likelihood that they can remain a long time either through permanent foster care or adoption. This becomes an important factor in the department's case. It can demonstrate that a permanent, loving, caring home has already been found, and also claim that removal of this child to the questionable home of his Indian parents or relatives would inflict severe, longlasting and traumatic damage to the child. Experts are brought in to testify to the traumatic effects of separation and placement. Parents unwittingly submit themselves to psychiatric or psychological testing paid for by the department to prove that they are unfit, troubled people and parents. The referrals to these psychological experts are made by the department workers who in their letters of referral painstakingly list the parents' failures. No mention is made of strengths.

And the parents' rights are terminated.

Indian families are more than a mother, father and children—they are a large network of relationships. Non-Indian families used to be this way, too. In spite of this known fact many departments fail or consciously decide to disregard it.

Indian children's rights to live with their families and tribes are not considered. Departments and courts do not have the capability or sensitivity to see beyond the next several months of the Indian child's life. Much of the hearing testimony dealt with children whose rights to their family and tribe had been terminated and who had been placed in good, loving homes. It has been found that many of these children never gained the feeling of permanance and security that was intended. When they grew old enough to wander they left these homes in search of themselves and their people.

Unfortunately for many Indian parents and relatives the long experience of disservice left open wounds of hurt and anger that

eventually consumed them. Many gave up hope and incorporated the sentence of worthlessness that was handed down by the court.

The question of best interest is much broader in Indian country than it is elsewhere. Termination hearings sever not only rights of parents but rights of children and rights of tribes. How department workers and the courts perform their work denies the Indian community the opportunity to strengthen old and develop new indigenous social service networks. How the courts define "best interest" negates the right of an Indian person to look for strength and assistance from his tribal identity by denying it as a resource, keeps the Indian parent, child and tribe in a dependent position in this era of self-determination and individual rights, and effectively kills more Indian people through the smothering arms of the helping process. The most learned scholars in child development, after examination of the facts, would not reach a different conclusion.

Indian people have much experience at healing the wounds of forced separation. Many Indian workers complain that only the worst Indian cases are referred to them. These people who are referred have a long history of intimidation from the departments and come to Indian agencies unwilling and afraid to trust even their own people. Indian agencies are temporary and sometimes unstable because of their funding base. What money is provided is sent with a message daring Indian agencies to prove that they can do better with these clients in an atmosphere of programmed handicaps.

It is frustrating and denigrating to continue to have to demonstrate one's need by digging out the dirty linen. It keeps a whole corps of Indian personnel concentrated on the negative features of Indian child welfare. It takes away from the time and energy they could use to enhance the strengths that exist. It keeps Indian parents in the column of troubled parents rather than healthy, successful ones. It keeps the trouble of Indian people paramount in the view of younger Indians. In this way it consistently and continually inflicts damage on their developing self-identity. It raises the question of self-worth while at the same time it provides damaging answers to the questions. It thwarts the efforts of many adult Indian people to become and present themselves as strong, healthy models to Indian youth.

It is an insidiously programmed process that must be stopped.

Indian people share in the concern that the best interest of all children be provided for and recognized. For Indian children they see that the best interest must also include recognition and appreciation for the persons they are. The best interest of the Indian child must be defined within the context of the child's whole life.