

the repeated efforts of close family members of two Indian children who had been orphaned to keep them in the community.

And, for perhaps the first time in the history of federal Indian law and policy, Congress recognized that state law and policy affecting Indian children and families has an enormous impact on the future of tribes, as well. Congress found "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe" (ICWA, sec. 1901[3]). The U.S. Supreme Court echoed that finding by relying upon the statements of Calvin Issac, who stated, "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, these 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" (*Mississippi Band of Choctaw Indians v. Holyfield*, 1989, p. 34).

Similarly, as Judge Engel noted in the *Wisconsin Potawatomes* case, "if tribal sovereignty is to have any meaning at all in this juncture of history, it must necessarily include the right . . . to provide for the care of its young, a *sine qua non* to the preservation of its identity" (*Wisconsin Potawatomes*, 1973, p. 730). The Supreme Court also relied upon the testimony of experts and studies that demonstrated the destructive effects of placing Indian children in non-Indian families and communities (*Mississippi Band of Choctaw Indians*, 1989).

#### STATE OF MICHIGAN CONTEXT

In Michigan, the story of Indian child removal was just as staggering and tragic. In a 1973 federal case involving children from the Hannahville Indian Community, a tribal expert witness, Dr. James Clifton, "testified that the assumption of jurisdiction in forced adoption by White courts is a matter of great bitterness among the Indian community" (*Wisconsin Potawatomes*, 1973, p. 726). Michigan Indians grow up with oral traditions and stories about the day that a state or church authority figure would show up at the family's house to take away their children (Dunlop, 2004; Grand Rapids Public Library, 1978). In 1974, a representative of the Native American Child Protection Council, based in Detroit and serving urban Indians, alleged before Congress that state officials had engaged in a the "kidnapping" of urban

Indian children (U.S. Senate, 1974, p. 161). By the 1970s, 1 out of 8.1 Indian children in Michigan were adopted out of their families and communities, a rate 370% higher than with non-Indians (U.S. Senate, 1977). One out of ninety Indian children in Michigan were in foster care, a rate 710% higher than with non-Indians (American Indian Policy Review Commission, 1976).

#### A MICHIGAN CASE HISTORY: THE TESTIMONY OF ROBERT KEWAYGOSHKUM

The testimony of the former chairman of the Grand Traverse Band of Ottawa and Chippewa Indians, Robert Kewaygoshkum, about his experiences as a child removed from his Indian family in northwest lower Michigan is a devastating example of how state agencies treated Indian families prior to the enactment of ICWA.

[Kewaygoshkum]: [A]s I was growing up with my grandparents there was a situation that my grandmother left and went to Grand Rapids visiting her elder relatives at the time, but I remember when she came back home she came back home in a casket.

Q: And from then you were with your grandfather alone?

[K]: I was with my grandfather.

Q: And for how long were you with him?

[K]: It probably was for a short time because this one day a white lady came to the door and knocked on the door and said it was time to go.

Q: How old were you at the time?

[K]: Oh, I know I was going into the third grade at the time, so probably seven or eight or somewhere in there.

Q: Had you had any prior experience with anybody coming to your household suggesting that maybe you should be taken away?

[K]: No.

Q: What happened that day?

[K]: Well, that day it probably all sticks in my mind but there was nothing I could do, nothing my grandfather could do. All I had to do is pack my bags and get in this lady's car, which was a little Volkswagen at the time, and off to boarding school I went.

Q: And what was that school?

[K]: That school is Harbor Springs Holy Childhood.

Q: In retrospect looking back now do you assume that she was a social worker?

[K]: Yes.

Q: What was it like in boarding school?

[K]: It was different from everyday life you live at home. You know, the boarding school there's rules, regulations. You got to live under their rules which

is no freedom. I guess you can look at it this way, in the Catholic boarding school they pretty much just take away your culture, could not speak your language. They cut your hair. I pretty much had a bush-cut most of my young adult life.

Q: Had you had long hair prior to being taken to the boarding school?

[K]: Yes, I had.

Q: Is that an important aspect of your culture?

[K]: Yes, it is.

Q: Did you have any contact with your grandfather when you were at the school?

[K]: Yes, because it wasn't very far away, you know, Harbor Springs was just across the bay. My grandfather used to come and visit probably at least twice a month at the school on weekends.

Q: Now, were you at the boarding school just for the school year or were you there year around?

[K]: This boarding school was just for the school year, and usually in the summertime you got out and most of the kids went back to their parents.

Q: Were you able to go back to your grandfather's house?

[K]: No, I wasn't. I was stuck in a foster home.

Q: And where was that?

[K]: That was in Petoskey.

Q: How long did you stay at that boarding school?

[K]: It was from third grade all the way up to eighth grade.

Q: And did they only continue through the eighth grade at that time?

[K]: Right.

Q: What happened after the eighth grade? Did you go back to your grandfather's house?

[K]: No, I didn't. I got shipped off to another—the current foster home I was at that took care of me through the summer months did not want me on a full-time basis through my high school years. So they shipped me out to another home way out in the country, way out in the boondocks, and I didn't care for that, and I told them. I said, I didn't want to stay there. So the next thing I knew I was shipped down to Kingsley, which was further away but, you know, there was no choice so I might as well go with the system.

Q: How old were you at the time?

[K]: I was probably about 13 or 14, I think.

Q: And where is Kingsley located?

[K]: Kingsley is about 18 miles south of Traverse City, roughly.

Q: In what county?

[K]: In Grand Traverse.

Q: When you were placed in a foster home in Kingsley, were you able to maintain any contact with your grandfather?

[K]: No, I didn't. It was too far away.

Q: Did you ever see him again?

[K]: I never saw him again. And the only thing I heard—three or four months passed that my grandfather had passed away in the fall of '65. I came into Kingsley in the spring of '65.

Q: How long were you placed with that foster family?

[K]: Through my high school years.

Q: During this time, did you have any contact at all with the Native American culture?

[K]: None whatsoever. (Keywaygoshkum, 2002, 122–126).

The excerpt details numerous characteristics of the legal regime prior to the enactment of ICWA. State social service workers appearing, without notice, to virtually kidnap Indian children, taking them to boarding schools and foster homes that either denigrated or ignored American Indian culture. Thousands of Indian families disintegrated under the pressure of these forces for decades. And for many Indian families, it continues.

#### THE EFFECT OF THE INDIAN CHILD WELFARE ACT

The enactment of ICWA has gone a long way to resolving many of the problems that compelled Congress to enact the statute thirty years ago, but there is a great deal more to be done. "Over twenty years after that law's enactment, Indian children have not seen a substantial decrease in the incidence of their removal from their families" (Jones, 2009, p. 140). In 2006, Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare reported that children of color, especially American Indian, remain disproportionately overrepresented in foster care placements in Michigan (Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare, 2006). The same is true nationwide.

Two key factors have undermined the effectiveness of ICWA in reducing the number of Indian children being removed from their families. The first factor involves the lack of tribal government funding to implement tribal child protective services, an obvious requirement, given the presumption of tribal jurisdiction over the children (Jones, 2009, p. 140). Indian nations, as they grow and develop their governance capacities, are moving toward solving this problem (Mall, 2009). The second problem is out of the hands of tribal governments—state courts and state agencies have effectively blocked the implementation of ICWA in many parts of Indian Country.