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Assessment of the Impact of BIA Guidelines on the Indian Child Welfare Act: A Case Study

Mary Kuchlenz

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Assessment of the Impact of BIA Guidelines on the Indian Child Welfare Act:

A Case Study

Mary Kuchlenz

EMPA 396 Graduate Research Project in Public Management

Golden Gate University

Faculty Advisors:

Professor Joaquin Gonzalez, Ph.D and

Associate Professor Mick McGee, DPA

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Abstract

The Indian Child Welfare Act of 1978 (ICWA) gave Indian tribes jurisdiction over Native American children in child welfare proceedings in order to rectify centuries of forced removal. The ICWA is currently facing legal challenges in that it creates disparate treatment between native children and non-native children. In 2016, the Bureau of Indian Affairs implemented Guidelines for better implementation of the ICWA. This study will address the efficacy of Guidelines and ICWA implementation in promoting continued cultural ties between tribal groups and native children placed in foster care. Prior studies cited in the literature review will be built upon to measure attitudes and acceptance of the ICWA in promoting cultural cohesion in the native community. Research will be conducted using surveys and interviews with tribal and county social workers in the United States. The study can potentially be used to establish the efficacy of the ICWA in the twenty first century.

I. Introduction

The Indian wars unofficially ended with the massacre at Wounded Knee in 1890, but the place of Indians in American society remained in limbo. Although not technically citizens until the Indian Citizenship Act of 1924, the forced Americanization of native children through the removal of children from their homes on reservations and educating them at boarding schools, often thousands of miles away, became the solution supported by the government and religious groups alike. This policy was designed to eradicate native culture and replace it with English-speaking people educated in useful trades. Capt. Richard H. Pratt, founder of the Carlisle Indian Industrial School in Carlisle, Pennsylvania, when advocating for Indian industrial schools famously remarked, “A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man” (Pratt, 1892).

After the practice was brought to mainstream consciousness during the civil rights movements of the 1960s, the Indian Child Welfare Act of 1978 was enacted to stop the practice and end a policy, which was eradicating Native Americans as distinct entities. The law provided that Native children could not be adopted outside of their tribe and, in cases of abuse, that they should be placed with other Native families within their tribe.

The constitutionality of the act has been challenged in recent years. The Goldwater Institute has sued stating that, “The Constitution guarantees equal protection to all Americans. But state and federal law denies equal protection for children of Native American ancestry.

Under the 1978 Indian Civil Rights Act (ICWA), these vulnerable kids are subjected to a separate, less-protective set of laws solely because of their race—laws that make it harder to protect them from abuse and neglect and virtually impossible to find them loving, permanent adoptive homes. The Goldwater Institute is fighting in courts nationwide to ensure that Indian children have the same constitutional protections afforded their peers of other races” (Goldwater Institute, 2019). Joined in the lawsuit are several prominent groups who have attacked native treaty rights as having created two-tiers of citizenship. Additionally, there have been some high profile cases where adoptions to non-native families have been reversed after several years because one of the parents was native (often just nominally).

On December 12, 2016, the Bureau of Indian Affairs (BIA) issued a new set of guidelines in an effort to correct deficiencies in the application of the act.

Statement Of The Problem

The ICWA has been attacked for failing to protect Native American children as well as other American citizens. Since 2015, there have been nine federal lawsuits (Goldwater Litigation) attacking ICWA directly on constitutional grounds. The Goldwater Litigation poses a threat to native sovereignty and self-governance. The ICWA was enacted to correct a century of deliberate efforts to dismantle native cultures within the United States. The results of this study may support (or not support) the continuing need for the ICWA in preserving native culture. This study will look at the current application of the law in light of the 2016 Bureau of Indian Affairs guidelines and how they corrected deficiencies in the original ICWA.

Purpose Of The Study

This study will specifically examine the effect that of the 2016 Bureau of Indian Affairs Guidelines in improving the application of the Indian Child Welfare Act.

Significance of the Study

This study is significant in helping to identify the outcomes and effectiveness of the 2016 Bureau of Indian Affairs Guidelines on improving Indian Child Welfare Act implementation. This study could potentially be utilized to make further changes to the Guidelines.

Research Questions

The Goldwater litigation asserts that native children are treated significantly worse than non-native children as a result of the ICWA. The 2016 BIA guidelines were enacted to address some of the concerns raised in the lawsuits. The main research question examined in this study is: What has been the effect of the 2016 Bureau of Indian Affairs Guidelines in improving the application of the Indian Child Welfare Act?

The following research sub-questions were also examined in this study:

1. How well did the Indian Child Welfare Act meet its stated goals of preserving Indian tribal ties prior to the enactment of the guidelines?
2. What do you consider to be the strengths and weaknesses of the Indian Child Welfare Act?
3. How have the new BIA Guidelines issued on 12/12/2016 changed the application of the ICWA within your tribe?

4. How well have the guidelines addressed your concerns about the IWCA?
5. What changes to the ICWA are necessary to secure the original intent of the legislation?
6. How have the new 2016 Guidelines improved your relationship with County social workers?

Research Hypothesis

The 2016 Bureau of Indian Affairs Guidelines will correct some difficulties, but not all, associated with the Indian Child Welfare Act.

Assumptions and Limitations

The study is limited by the willingness of subjects to speak freely about Native American issues, the biases of the subjects surveyed, and the limited timeframe within which the research was conducted.

Definition of Terms

Native or Indian. The terms Native and Indian will be used interchangeably, as appropriate. Although modern usage of the term Indian has some negative connotation, at least in non-native culture, it is the term used in the ICWA and is often used as a catch all for many different tribes by Native Americans themselves.

Native children. Native children will be limited to those children acknowledged as members of a federally or state recognized tribe.

Continued tribal affiliation. Continued tribal affiliation will be construed as tribal interaction outside the realm of the foster care or adoption system. This will include any

ceremonial or cultural exchange, participation in tribal events or contact with members of the tribe.

Expected Impact of the Research

This research should support or reduce support of the proposition that the ICWA is useful in preserving Native American tribal culture. Aside from the inherent constitutionality of the ICWA, it may influence future revisions to the ICWA itself.

II. Review of Literature

Introduction

Protecting children from abuse and neglect so that they can thrive and mature is the most fundamental child welfare service that a society can provide. This chapter reviews the scholarly literature surrounding U.S. Government policy toward assimilating Native American children. Specifically, it focuses on the Indian Child Welfare Act of 1978 as it relates to California's Native American population, its effectiveness and efforts to improve its implementation by way of the Bureau of Indian Affairs Guidelines published on December 12, 2016.

Bitter History

The history of Indian removal for the process of civilizing native children is a long one. Cross (2000) points out that the first removal act was enacted in 1609 by the Virginia Company. As reported during Congressional hearings (1978) the first U.S. federal policy to address the welfare and education of Native Children was passed in 1819. The Civilization Fund, as it was called, provided grants to private agencies, mostly churches, to provide programs to civilize native peoples (Slaughter, 2000). This policy eventually led to the creation of boarding schools to teach and house Indian children, often far away from their tribes and families (National Indian Child Welfare Association, 1997).

In 1953, Public Law 280 was passed by Congress and passed jurisdiction for most civil and criminal acts to the local State and Tribe. The motivation for the law was to make most Indian people eligible for state-administered services such as public assistance and child welfare services (Cross, 2000). A survey by the Association on American Indian Affairs in

the 1970s found that 25% to 35% of all Native American children had been separated from their families (Georges, 1997, as cited by Cross, 2000). To correct the injustices that occurred at these schools, Congress passed the Indian Child Welfare Act of 1978 (P.L. 95-608).

Two Systems and Two Understandings

The complicated history of American Indians within the Constitutional framework is reflected in the application of law in modern society. Slaughter (2000) notes that the unique place of tribes in the American political order is reflected in their semi-sovereign constitutional status. The scheme of dual sovereignty (tribal and American) means there are two cultural, normative and legal orders within the nation. Conflict between them is endemic.

Not all state courts have easily taken to this dual jurisdiction in family law. From the early years of the existence of the United States, states have struggled against the sovereignty of Indian tribes. Instead of accepting tribes as third sovereigns, as the federal government dictates, states often view tribal jurisdiction as an intrusion into state authority. (MacLachlan, 2018). Many states have misapplied the law either unwillingly or, perhaps willingly. In 2016, the Bureau of Indian Affairs published updated rules/guidelines to clarify ICWA requirements for the first time in its history (MacLachlan, 2018).

Disparate Results

Vernon Carter used child welfare data from 1999 to compare American Indian/Alaskan Native (AI/AN) children to non-Indian children placed into out-of-home care. The National Survey of Child and Adolescent Well-Being was a survey conducted over 15 months between October 1999 and December 2000. The data was conducted through face-to-face interviews with children, caregivers and CPS workers and yielded a representative

sample of 1,465 children in out-of-home care. The dependent variables were outcomes for AI/AN children and non-Indian children. The independent variables were comparisons between AI/AN children and non-Indian children with regard to examining major family issues associated with a child placed into out-of-home care. This examination was conducted through a checklist compiled by child welfare workers at the time of initial investigation and concerned alcohol/drugs, mental health, and domestic violence.

The result of the study indicated statistically significant variations between native children aged 0 to 2 (28.8%) vs. non-native children aged 0 to 2 (15.7%), and native children aged 6 to 10 (41.1%) vs. non-native children aged 6 to 10 (35.9%) who were removed from their birth homes. Gender differences indicated that 61.9% of native males were removed as opposed to 42.1% of non-Indian males. Finally, 59.4% AI/AN vs. 46.3% non-Indian families were not able to meet basic needs. Only two factors related to the primary caregiver were found to be statistically significant. The first was alcohol, followed by mental health, both of which were statistically more likely to be problems for AI/AN. Physical and sexual abuse was more likely for non-Indians whereas neglect was more likely for AI/AN caregivers.

The National Child Welfare Resource Center conducted a national needs assessment of tribal child welfare, which explored current practices (as of 2012) in tribal welfare and attempted to identify systemic strengths and challenges. As reported by Robin Leake, Cathryn Potter, Nancy Lucero, Jerry Gardner, and Kathy Deserly reported the findings in their study. The study was conducted through a general survey of 85 multiple choice, checklist, and open-ended questions administered online and on paper. Additionally, onsite assessments and telephone interviews were conducted. The response yielded 262 completed surveys from 95 federally-recognized tribes, 42 tribal child welfare staff surveys from onsite assessments,

31 tribal child welfare direct telephone interviews and 118 stakeholder onsite assessment interviews. The survey introduced an independent variable into five topic areas (1) Tribal Child Welfare Practice, (2) Foster Care and Adoption, (3) the Indian Child Welfare Act interactions, (4) Legal and Judicial experiences, and (5) Tribal Child Welfare Program Operations.

The dependent variable (responses) expressed a need to expand tribal child welfare programs in order to meet the needs of indigenous families. The identified needs were a tribal code, which aligns with the practice model, better information management, workforce development and formal assessment protocols. Most respondents felt that the foster care programs should be managed by the tribe in order to keep children in their families. A strong concern was expressed that federal policy presented barriers to tribal agencies. They expressed that there were few ICWA jurisdictional disputes (only 12% indicated frequent disputes). Many expressed that State and County workers do not fully understand or correctly interpret the ICWA.

Perceptions

Halverson (2002) examined the perception of Native Americans regarding the foster care system. Her study found that many Native Americans reported that they were discouraged from working with the system, had different definitions of family and relatedness and still suffered from historical abuses. Indian children were still being removed at a rate comparable to pre-IWCA rates. Many urban natives live far away from their tribal affiliations and local child welfare places their children outside of the tribal structure. The availability of tribal services varies outside of the reservation proper.

Compounding the problem is a lack of understanding by non-natives. In recent years, the conservative think tank, Goldwater Institute has pushed for a dismantlement of the IWCA. Clarren (2017) has described this as Indian children having a “bounty on their heads”. Explain what this bounty on their heads mean,. Goldwater Institute argues that rather than protecting Indian children, ICWA subjects them to unfair rules that don’t apply to other children. “Cloaking its efforts in the language of civil rights, Goldwater has launched a coordinated attack against ICWA alongside evangelical and anti-Indian-sovereignty groups, adoption advocates, and conservative organizations like the Cato Institute” (Clarren, 2017). Tribal communities fear that if they are successful, they will dismantle not only ICWA, but also tribal self-determination entirely.

Adequate communication and understanding between Tribal and State agencies are necessary to protect native children. Cross (2000) points out that “Even if [Tribal child protective services’] programs were fully operational, tribal services would reach less than half of all American Indian children. Public and private mainstream child welfare agencies will always serve Indian children since more than half of the Indian population now lives off reservation.” Tribal governments cannot, alone, provide all the services needed to protect native children.

Application in California

Three studies examine the impact within California in particular. Gottesman (2011) found a number of deficiencies in the application of the law in California. Indian children continue to be removed from their homes at high numbers, child welfare workers fail to provide notice to tribes, tribes lack funds to hire their own welfare services, and that there is a lack of data regarding implementation of the ICWA (Gottesman, 2011). Her study revealed

that the passage of the ICWA does not guarantee that the law will be faithfully executed in the states. Specifically, courts in California have made rulings which have allowed the child welfare system to ignore the law.

California has the most number of ICWA cases of any state in the country (Fort, 2009). One of the requirements of the Act is notice to the tribe of a proceeding involving a native child. “Far and away notice noncompliance is the most litigated issue in these California cases” Fort (2009). Parents claiming Cherokee affiliation involve over half the cases, despite the Cherokee not being native to California. She suggests that, in many instances, the state agency does not believe the claim of the parent to tribal membership.

While Fort focused primarily on notice to the tribes, Erika Salinas studied the communications and interactions between tribal and county social workers with regard to the Indian Child Welfare Act. Her original hypothesis was that there was a lack of communication between individual tribes and counties and that this led to a disconnect between the two. In order to test her hypothesis, she conducted a survey of California tribes by asking Indian Child Welfare Act (ICWA) social workers a series of 18 questions to analyze their relationships. Of particular note, her research focused solely on California tribes. Her primary question was, “How do tribal Indian Child Welfare Act (ICWA) social workers define their level of communication and collaboration with the county?” The dependent variables were the responses to the independent variable contained in the survey. The survey consisted of parts related to the interpretation of the ICWA, their feelings about it and the effect of the ICWA on the people and tribe.

The study consisted of face-to-face interviews and the identification of commonalities. After conducting the interviews, northern California tribes were separated from southern

California tribes to compare/contrast geographical differences. Salinas found that the social workers in the both regions were overall satisfied with their interaction at the county level, but were frustrated with interactions outside their local regions. In particular, counties outside the region did not understand the intricacies of the IWCA. Another frustration surrounded funding for services. Ultimately, the study recommended greater familiarity between county and tribal workers.

Conclusion

The literature on this subject shows a lack of communication between native and state authorities, much of it a result of historical injustices. California, as the nation's most populous state, is affected by that past, but also has difficulties communicating with tribal authorities and properly applying it. These difficulties compound tribal wariness with cooperatively working with or within the system for the benefit of native children.

III. Research Methods

Introduction

This chapter provides a brief introduction and overview of research methods. Historical data and peer reviewed articles were collected and evaluated, and a qualitative case study approach was used to understand the situation in greater depth. Data was collected through surveys and interviews, and synthesized into an overall portrait of the cases.

The research methodology focused first with a review of relevant literature and government databases. Access to the Adoption and Foster Care Analysis and Reporting System (AFCARS) was particularly valuable. Based on the information gathered from the available literature and databases, both a qualitative and quantitative approach was devised and focused on all federally recognized tribes in the United States.

Research Question

What has been the effect of the 2016 Bureau of Indian Affairs Guidelines in improving the application of the Indian Child Welfare Act? This research question allowed for me to create a survey and interview questions, which focused on Native American perceptions with regard to the success of the ICWA and attempts to reform it. Based on the questions asked, sample populations were selected for interview and survey data collection. The sample populations included social workers and ICWA representatives from all 573 federally recognized tribes in the United States as listed in the Federal Register (2018).

Sub Questions

1. How well did the Indian Child Welfare Act meet its stated goals of preserving Indian tribal ties prior to the enactment of the Guidelines?

2. What do you consider to be the strengths and weaknesses of the Indian Child Welfare Act?

3. How have the new BIA Guidelines issued on 12/12/2016 changed the application of the ICWA within your tribe?

4. How well have the guidelines addressed your concerns about the IWCA?

5. What changes to the ICWA are necessary to secure the original intent of the legislation?

6. How have the new 2016 Guidelines improved your relationship with County social workers?

Hypothesis

The 2016 Bureau of Indian Affairs Guidelines will correct some difficulties, but not all, associated with the Indian Child Welfare Act. This hypothesis led me to select a large number of tribes, both large and small, from across the United States.

Data Collection and Analysis

The first step in data collection was to identify sources within the Native American community who have an in depth knowledge of the ICWA and Guidelines and were

representative of individual tribes. A list of ICWA representatives was obtained from the Federal Register (2018).

The second step of data collection was to send interview questions to each representative for tribes located in California. The third step was to send survey questions to all tribes located on the West Coast using AllCounted.com. The data was then aggregated and arranged into tables and graphs for comparison.

By using closed-ended questions, values were obtained using a simple yes/no answers and a percentage was obtained. Optional comments and post survey interviews, additional responses added qualitative value to the initial results.

Population Sampling Strategy/Limitations

Participants to this study will be the designated ICWA tribal representatives as listed in the Federal Register. Previous sample size has been limited because of a refusal to participate by tribal organizations. Salinas (2014) only received 14 responses. The study expects to get at least 30 to 50. Based on the previous history of Indian removal, there is a potential for bias. However, previous studies have used this population, so the results of this study can be compared to previous studies with a similar bias for a comparison of results.

Procedure

The study was conducted in a two-pronged fashion using both interview and survey questions. The survey used closed-ended questions requiring a yes or no answer with the option to add remarks. The interviews were conducted using open-ended questions. Follow up interviews were conducted based on the responses.

Dependent and Independent Variables

The dependent variable in this study is the opinion of tribal representatives. The independent variable is the 2016 BIA Guidelines and the ICWA. Examining the different opinions selected in this study provided data regarding how well the 2016 Guidelines and ICWA were meeting their stated goals.

Operational definitions

Indian Child Welfare Act. The Indian Child Welfare Act enacted by the United States Congress in 1978 (Pub.L. 95–608, 92 Stat. 3069, enacted November 8, 1978, codified at 25 U.S.C. §§ 1901–1963).

BIA Guidelines. The guidelines issued by the Bureau of Indian Affairs on December 12, 2016.

Improve. To achieve or produce something better than.

Application. The action of putting something into operation.

Preserve. Maintain (something) in its original or existing state.

Previous studies have noted a disinclination on the part of tribal workers to participate with non-native researchers. By using a two-pronged approach, answers were obtained with the shield of anonymity and minimal intrusion. The interviews reflected the views of tribal representatives who wished to expand on their answers.

Internal and External Validity

Internal and external validity was monitored by providing all subjects the same information and asking each the same questions. Information presented to subjects was structured to provide a neutral presentation. The questions were designed to remove leading questions, which might contribute to bias. Lastly, the results of data collection remain anonymous. Additionally, external validity of the study can be obtained by comparing the results to previous studies conducted in a similar manner.

Limitations

Previous studies have shown reluctance by tribal representatives to cooperate with non-native researchers. Therefore, the number of survey responses has been limited. Data collected in this study can be compared and contrasted with previous studies.

Summary

The research was designed to measure opinions and attitudes, while allowing the minimum imposition on the study subject's time. By employing a minimally invasive study and using designated representatives on the subject matter, the study minimized limitations presented in previous studies. However, previous use of this design in prior studies allows for a comparison of results.

IV. Results and Findings

Objectives of the results and findings

This chapter attempts to answer the research question: What has been the effect of the 2016 Bureau of Indian Affairs Guidelines in improving the application of the Indian Child Welfare Act? The following sub-questions will be used to determine the answer to the research question:

- How well did the ICWA meet its stated goals of preserving Indian tribal ties prior to the enactment of the guidelines?
- Have the BIA Guidelines impacted the implementation of the ICWA?
- Have the BIA Guidelines address prior concerns about the ICWA?
- Have the BIA Guidelines improved interaction between tribal and county social workers?

Research Hypothesis

The 2016 Bureau of Indian Affairs Guidelines will correct some difficulties, but not all, associated with the Indian Child Welfare Act.

Primary Data

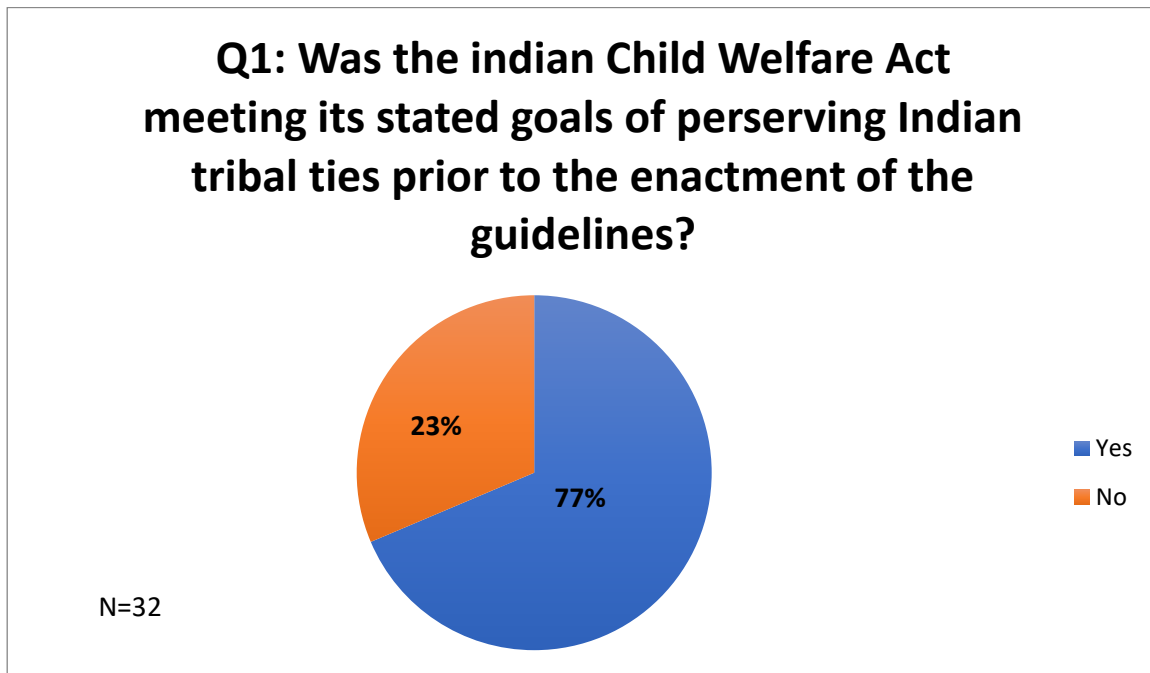
Data was collected by emailing representatives from each of the 573 federally recognized tribes listed in the Federal Register (Vol 83, No. 107, June 4, 2018, pp. 25685 - 25714). The surveys were conducted via links provided by AllCounted and SurveyMonkey. The results were then manually entered into Excel for Mac 2011 (v. 14.7.3) in order to

aggregate and compile the results. The following graphs illustrate the responses to each question as of February 27, 2019. A total of 32 responses were received.

Interview Questions:

| Q1: Was the Indian Child Welfare Act meeting its stated goals of preserving Indian tribal ties prior to the enactment of the guidelines? | | |
|---|------------------|-------------------|
| Answer Choices | Responses | Percentage |
| Yes | 7 | 23% |
| No | 25 | 77% |
| Total | 32 | 100% |

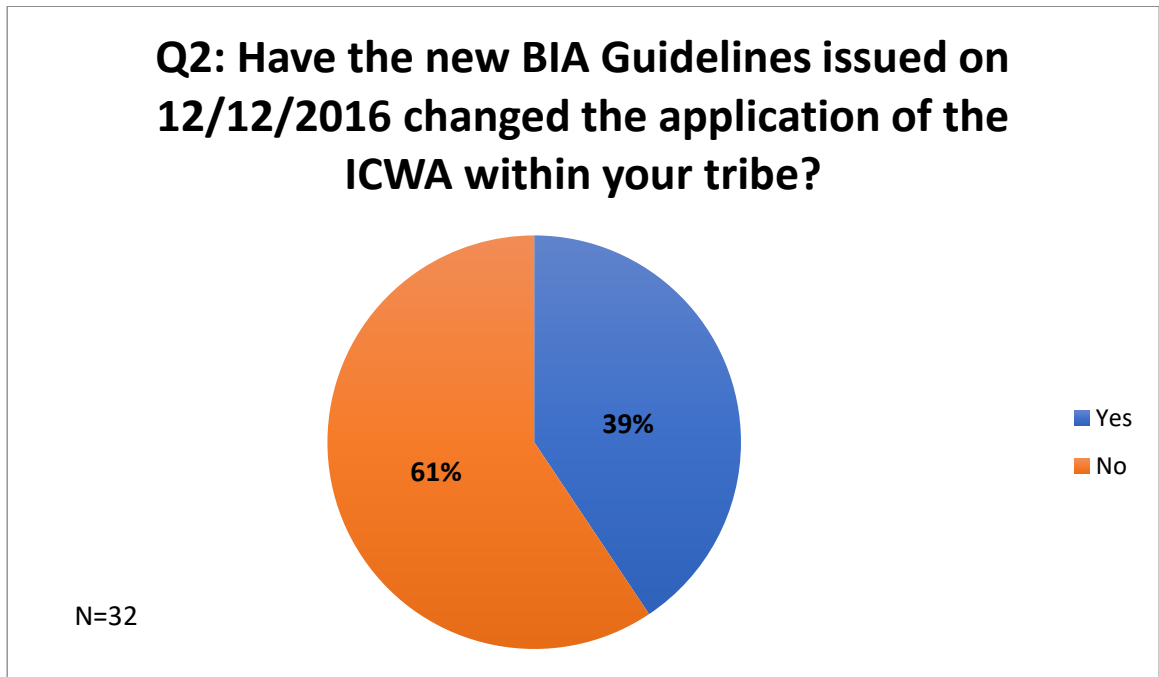
1. Was the Indian Child Welfare Act meeting its stated goals of preserving Indian tribal ties prior to the enactment of the guidelines?



This question was asked to establish a baseline opinion about the efficacy of the ICWA. The data collected indicated that about 3/4ths of respondents believed that the ICWA was meeting its stated goals of preserving Indian tribal ties.

2. Have the new BIA Guidelines issued on 12/12/2016 changed the application of the ICWA within your tribe?

| Q2: Have the new BIA Guidelines issued on 12/12/2016 changed the application of the ICWA within your tribe? | | |
|--|------------------|-------------------|
| Answer Choices | Responses | Percentage |
| Yes | 13 | 39% |
| No | 19 | 61% |
| Total | 32 | 100% |



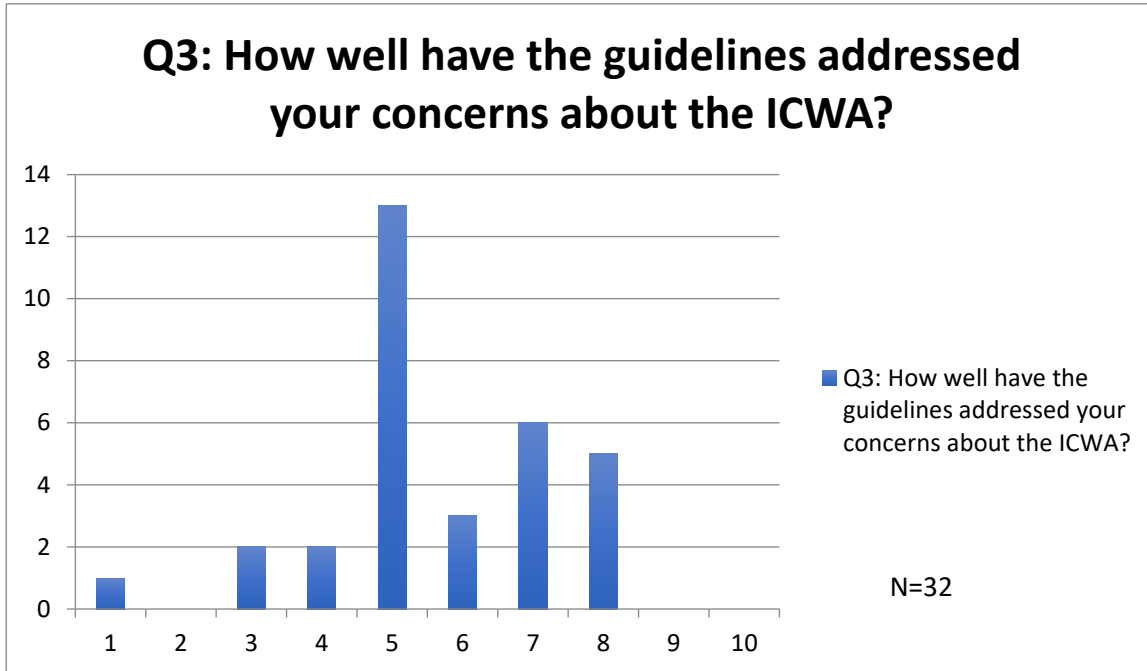
This data suggests that most survey participants do not believe that the Guidelines have changed the application of the ICWA. This may be due to the fact that

most felt the ICWA was working prior to the introduction of the Guidelines. A better question might have been, “If you do not feel the ICWA was working prior to the introduction of the Guidelines, do you believe the Guidelines changed the application of the ICWA within your tribe?”

Nearly 40% of the respondents (greater than the 23% who did not feel the ICWA was meeting its stated goals) felt that the Guidelines did change the application of the act within their tribe. This represents a 16% change of opinion from prior to the Guidelines.

3. How well have the guidelines addressed your concerns about the ICWA?

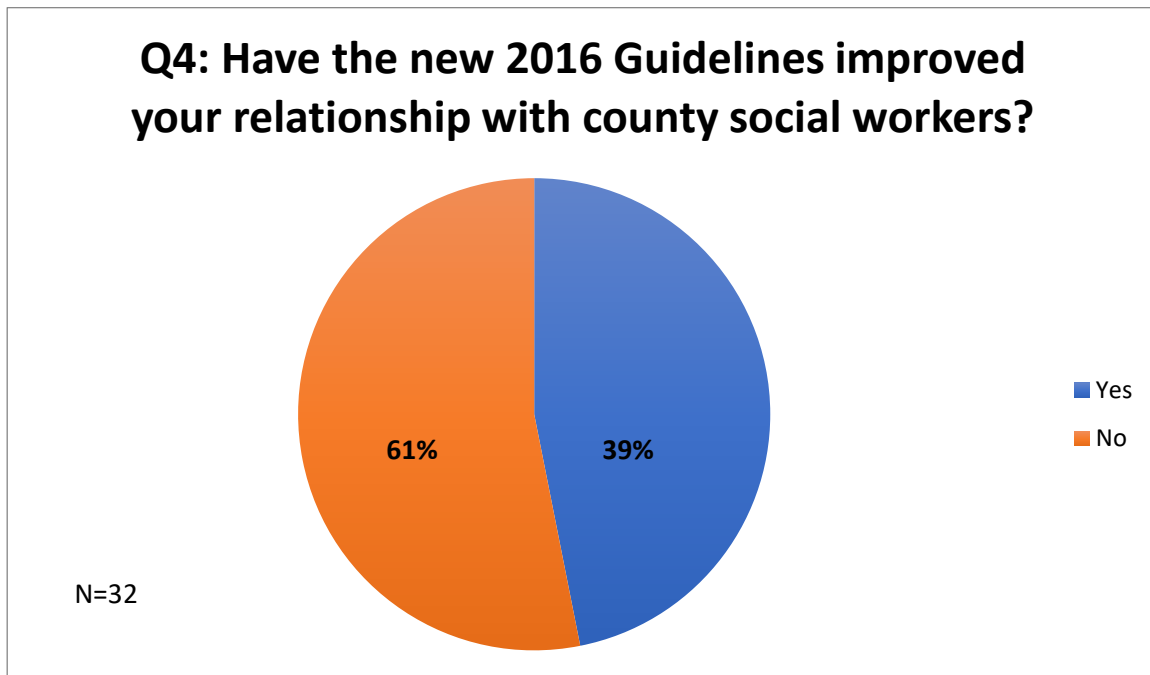
| Q3: How well have the guidelines addressed your concerns about the ICWA? | | |
|---|------------------|-------------------|
| Rate Change | Responses | Percentage |
| 1 | 1 | 3% |
| 2 | 0 | 0% |
| 3 | 2 | 6% |
| 4 | 2 | 6% |
| 5 | 13 | 41% |
| 6 | 3 | 9% |
| 7 | 6 | 19% |
| 8 | 5 | 16% |
| 9 | 0 | 0% |
| 10 | 0 | 0% |
| Total | 32 | 100% |



Question 3 was used to gauge how much the Guidelines have addressed their concerns about the ICWA. The question asked respondents to rate how well the Guidelines have addressed their concerns about the ICWA on a scale of one to ten. Again, this question probably should have been tailored to those respondents who felt that the ICWA was not meeting their needs. The average of all responses was 5.63, which would indicate a slightly better than average or neutral response.

4. Have the new 2016 Guidelines improved your relationship with county social workers?

| Q4: Have the new 2016 Guidelines improved your relationship with county social workers? | | |
|--|------------------|-------------------|
| Answer Choices | Responses | Percentage |
| Yes | 13 | 39% |
| No | 19 | 61% |
| Total | 32 | 100% |



Question 4 sought to address one of the most common complaints about the ICWA, that there is a lack of communication and coordination between tribal and county social workers. The results suggests that slightly more than half of the respondents felt that the guidelines did not improve the relationship between county and tribal social workers.

5. What do you consider to be the strengths and weaknesses of the Indian Child Welfare Act?

Q5: What do you consider to be the strengths and weaknesses of the Indian Child Welfare Act?

- 1 Access to services
 - 2 I thing that there is a better working relationship between Tribes and State. I thing the State is working harder to preserve Native culture, unifying Native children with relatives.
 - 3 The new laws are well written, the state needs to be trained as to what ICWA is and how it applies to native children.
 - 4 Lack of adequate training. Always.
 - 5 Strengths would be that our children are being treated like humans and not like animals to be given away without letting the Tribes a chance to allow the children to find their identity as to who they are and where they come from. Being allowed to know their tradition and Culture is a must. Weakness would be allowing the states to adopt out our children even if the ICWA laws apply.
 - 6 Strengths would be the communication of understanding between the state and the Tribe as well as the judicial system. Have not experienced any weakness yet, has been positive.
-

7 Communicating with each other; Local Government and State. The weakness is not communicating.

8 That there is no consequences for state agencies who do not follow ICWA.

9 Strengths: overall law; placement preferences; notices to tribes; full faith and credit; Weaknesses: no notices to tribes of voluntary relinquishments.

10 Active efforts and tribal values re placement and child rearing practices/beliefs of child needs.

11 Weakness: No training for courts, CWS, State or families. Strengths: Better defined Active Efforts; Added Causal relationship criteria; Better defined QEWs; Created a Federal Regulation with helpful BIA Guidelines

12 Better "Active Efforts" description and practice; Weakness: Training for Bench Officers is still inadequate

13 Since the 2016 Guidelines, I've noticed in my location, Mendocino County HHS Family and Children's Services has been willing to create a more elaborate and solutions focused approach to Quarterly ICWA Round table meetings between the Agency and all local Tribes. Additionally, the Agency has recently created a new "Community Unit" and sends that representative as a liaison

between the Agency and local Tribes to monthly Tribal ICWA

Coalition meetings.

14 Good Intent

15 Strengths: None Weaknesses: No training

16 Lack of training

17 One strength is that more Native children are being placed with family/native homes. One weakness is that there are still some state DFS Agencies not following the ICWA Guidelines

Question five was an open-ended question that asked the respondents what they believed were the strengths and weaknesses of the ICWA. The most common response related to training.

6. What changes to the ICWA are necessary to secure the original intent of the legislation?

Q6: What changes to the ICWA are necessary to secure the original intent of the legislation?

1 Communication.

2 There are always improvements to be made - The Tribes most often are not notified; many Social Workers don't understand village life - or the native culture or traditions.

3 Intense, in depth training.

4 More training!

5 The state social workers need to be trained and ICWA needs to be followed.

6 Private adoptions shouldn't be allowed, State courts need to understand the important values of the ICWA law when it comes to mixed marriages. As long as the child has a CIB that child belongs to the Tribe and should remain with the Tribe.

7 Updating information on the contact list as there are a lot of turnovers on both ends of OCS and ICWA caseworkers. Retraining the workers takes a lot of informing the personnel again.

8 There should be penalties for state agencies who do not comply with ICWA.

9 Funds to tribes are not adequate to monitor the state adherence to ICWA

10 Don't change

11 Overlay of court process and state specific

12 Provide funding to train and educate all systems; create consequences for non-compliance that are more than a slap on the wrist; provide legal counsel to tribes

13 Complete buy-in is needed by all County and state Child Welfare agencies, not just counties and states doing the bare minimum. All states and Counties need at least 3 days training specific to the

original intention of ICWA, current ICWA regulations, and dedication to intensive Child Welfare staff training on the history and culture of Native Americans Tribes with which they collaborate.

14 Need more training

15 More training would be helpful.

16 Training

17 I think that there needs to be more monitoring of State Agencies by BIA to make sure that those agencies are complying with the ICWA Guidelines

Question 6 asked the respondents to recommend changes to the ICWA to help it achieve its original intent. Again, the most common response was training. The second most common response was to recommend penalties against county agencies that refused to follow the law.

Secondary Data

Secondary data was gathered by conducting interviews by email and by phone. One person partially answered the questions posed and a second person provided a more in-depth interview by phone.

The interview posed the following questions:

1. How well did the Indian Child Welfare Act meet its stated goals of preserving Indian tribal ties prior to the enactment of the guidelines?

2. What do you consider to be the strengths and weaknesses of the Indian Child Welfare Act?
3. How have the new BIA Guidelines issued on 12/12/2016 changed the application of the ICWA within your tribe?
4. How well have the guidelines addressed your concerns about the IWCA?
5. What changes to the ICWA are necessary to secure the original intent of the legislation?
6. How have the new 2016 Guidelines improved your relationship with County social workers?

Interview One was by email and written response on February 20, 2019. The subject was a member of the Shoshone Tribe and she was unfamiliar with the Guidelines. She indicated that the only thing new from the BIA is that they “established an office at the area level and now they have to report quarterly.” Her tribe does not have a Social Service Program, but it does respond to inquiries if children are tribal members or eligible to be enrolled. Her State ICWA office does have meetings but the tribe doesn’t have the resources to do much traveling, though they are reimbursed for postage stamps used to respond to various agencies throughout the United States.

Interview Two was a phone interview was conducted on March 1, 2019 with a non-native social worker at a large Indian reservation in South Dakota. She stated that the ICWA was for the most part working. It comes down to implementation on the local level. The effectiveness of the ICWA comes down to the competency of tribal CPS organizations and the number of cases.

She stated that the Guidelines have helped in that they have gotten everyone on the same page and provided technical training and assistance, but ultimately, it comes down to the local level. CPS will try to make native foster care placements, but often there are no licensed foster care placements available. In those cases, they will make kinship placements. There are often no background checks and the children are still in danger.

In one instance, a girl, who was abused by her father for over 8 years, was placed in the foster care system. Her mother simply “went missing” and has never been found. The grandmother sided with the father over the granddaughter. They attempted to place her with her sister, but the sister already had three children and had difficulty caring for one more person. A non-native family wished to adopt her and put the paperwork in, but a native person from a different tribe in Colorado (who had already adopted 21 children) was able to adopt her first. She ran away several times.

The Act oftentimes doesn’t allow for children to stay in the same area or on the reservation. In the example above, adoption with another tribe was prioritized over adoption to a non-native family. No input was allowed from the child herself and she lost everything she knew.

With or without the ICWA, the tribes are reluctant to terminate parental rights which makes it difficult for other members of the tribe to adopt. In one instance, a mother who had murdered her infant and was imprisoned, but parental rights were not terminated.

CPS tries to keep siblings together, but often families aren’t able to take in three or four children. If the foster home is not licensed, they do not get a stipend to help defer the

costs of childcare. Many native families live in prefabricated homes with multiple other families.

Additionally, the ICWA doesn't account for urban Indians who are not connected to the tribe or practice native culture. Children are often adopted out far away from their family and tribe over local non-native families who would help them maintain their relationship.

The main difficulty with the ICWA is that it is a blanket policy that doesn't account for individuals and the capacity of social workers on the ground to implement it. The ICWA would benefit from capacity building at the local level.

V. Conclusion and Recommendations

Through the data collection process, there was a clear difficulty in obtaining responses either to interview or survey requests. Many of the email addresses listed in the Federal Register were no longer valid. Of the addresses that were, there was a low response rate. Because of their employment, both interview subjects wished to remain anonymous. Those that did participate expressed frustration with the implementation of the Indian Child Welfare Act and Guidelines. One participant expressed her gratitude that I cared about this issue. Since the participants chose whether or not to participate, the survey results will obviously be skewed toward the opinions of those who felt most strongly about the issue.

Conclusion and Recommendation One

The most common comment received in response to the surveys was that more training was needed for social workers. Although a plurality of respondents felt that the Guidelines were helpful, they indicated that there was inadequate training provided to social workers and that the Guidelines did not solve much larger problems at the local level. Smaller tribes, as indicated by Interview One, lack the funding to provide training. A recommendation from this study is for the federal government to provide more intensive training on a regular basis.

Conclusion and Recommendation Two

The respondents indicated that it was necessary for there to be better communication between Tribe and county social workers. This may be an issue of two child protection services operating in silos, or of mistrust, however, better communication between the parties would allow for better services for the children. Better communication may actually be an

added benefit of better training. A recommendation from this study would be for the training sessions to be held with both tribal and county social workers at the same time.

Conclusion and Recommendation Three

The results of the studies consistently showed the need for more training, but a second issue was also raised. Another benefit of increased funding is the ability of the tribes to monitor the child welfare system for potential violations. A third recommendation from this study is for the federal government to provide increased funding to meet the need for increased training and enforcement.

Conclusion and Recommendation Four

A fourth issue raised by responses to the survey was that there were no consequences to county agencies for failing to follow the requirements in the ICWA. Providing consequences for noncompliance may inspire counties and their workers to be more vigilant when working with the act. My fourth recommendation would be that the federal government put in place some sort of incentive, whether monetary or not, to encourage future compliance with the act.

The ICWA has been attacked for failing to protect Native American children. Since 2015, there have been nine federal lawsuits attacking ICWA directly on constitutional grounds. This litigation poses a threat to native sovereignty and self-governance. The results of this study support a continuing need for the ICWA in preserving native culture. However, these needs are not yet being completely met, even after the implementation of the Guidelines.

While the ICWA was enacted to correct a century of deliberate efforts to dismantle native cultures within the United States, it seems now to be largely accomplishing that mission. Despite that, all respondents thought that there was much that could be done to improve the implementation of the act. If implemented, the recommendations in this study should provide some measure of assistance in furthering the goals of the ICWA.

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Appendix

Invitation for Research Project Interview

My name is Mary Fernandez Kuchlenz and I am completing my master's degree in public administration at Golden Gate University. I am inviting you to participate in a brief interview for my research project on the effect of the 2016 Bureau of Indian Affairs Guidelines in improving the application of the Indian Child Welfare Act. I'd like to get your professional perspective. Your answers will be kept confidential and anonymous and will be used by me only for the purpose of completing my degree. Your input is invaluable to my research topic. Thank you in advance for participating and for helping complete my research study.

Purpose of Interview: This data will be used to identify positive and negative outcomes in the treatment and placement of native children as a result of the changes in the ICWA.

Risks or discomforts:

No risks or discomforts are anticipated from taking part in this study. If you feel uncomfortable with a question, you do not need to answer or can end the interview altogether. If you decide to quit at any time before you have finished the questionnaire, your answers will NOT be recorded.

Confidentiality:

Your responses will be kept completely confidential. Only the researcher will see your individual survey responses and the results of the content analysis of your responses.

Interview Questions:

1. How well did the Indian Child Welfare Act meet its stated goals of preserving Indian tribal ties prior to the enactment of the guidelines?
2. What do you consider to be the strengths and weaknesses of the Indian Child Welfare Act?
3. How have the new BIA Guidelines issued on 12/12/2016 changed the application of the ICWA within your tribe?
4. How well have the guidelines addressed your concerns about the IWCA?
5. What changes to the ICWA are necessary to secure the original intent of the legislation?
6. How have the new 2016 Guidelines improved your relationship with County social workers?