



Perspectives from the Field

**Terry Cross, Executive Director,
National Indian Child Welfare Association**

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This is the third in a series of interviews SPARC is conducting with prominent leaders in the field and members of our advisory board. Terry Cross, Executive Director of the National Indian Child Welfare Association. Terry is the leading advocate on best practices and policies for American Indian and Alaska Native children in state and tribal child welfare systems. Terry has 41 years of experience working directly with children and families, teaching, writing, and promoting best practices. He served on the faculty of Portland State University School of Social Work as Adjunct Professor for 15 years, and has authored numerous social work articles, chapters, and reports on issues related to American Indian and Alaska Native child welfare, children’s mental health, and juvenile justice. In 2009, Terry received the Civic Engagement Award for Excellence in Community-Based Research from Portland State University, and in 2010 he was a finalist for the Ecotrust Indigenous Leadership Award. In June 2011, he received the prestigious Robert F. Kennedy Children’s Action Corps Embracing the Legacy Award at the Kennedy Presidential Library in Boston. Terry received his Masters in Social Work from Portland State University in Portland, OR, and he is an enrolled member of the Seneca Nation.

In this podcast interview, Terry describes the unique role of tribes in child welfare administration and what advocates need to know to more effectively advocate on behalf of tribal children and their families. He reminds advocates that it’s important to remember that there are Native American Alaska Native children living off of Indian reservations to whom ICWA applies, and for whom there are specific services that may be available. He also encourages advocates to get to know their tribal leaders and engage them in advocacy efforts.

Below is a transcript of highlights from the interview.

SPARC: Let’s start with some basics. Most child welfare advocates are familiar with how public child welfare systems work, but they may not be aware of the unique role of tribes in child welfare. Can you explain this?

TC: The role of tribes in child welfare is based in the sovereignty of tribes as dependent nation-states. Tribes pre-date the United States, and their sovereignty is recognized in the United States Constitution. One of the things that is reserved to a sovereign nation is the protection of its children – so tribes have the responsibility to ensure the well-being of their children.

There are 566 federally recognized tribes in the United States. The average tribe size is about 1500 people, but they range from just a handful of people to almost half a million people (like the Navajo Nation). Tribal child welfare programs can be very diverse – from an agency acting as a watchdog service that ensures the rights of the tribe’s children are protected in state systems, to a full-service child welfare system that looks very much like a state- or county-run system. Tribes have a role with their tribal members on reservation as well as off of the reservation.

SPARC: For children living on the reservation, how are they served?

TC: Most tribes have their own tribal codes regarding child welfare – dependency codes, codes on child abuse and neglect, that sort of thing. Also, tribal courts hear dependency cases and child abuse cases. More than a third of all federally recognized tribes run their own child welfare programs. Other tribes have their own codes and perhaps their own courts, with services provided by the Bureau of Indian Affairs (BIA) – so you may have a situation where tribal child welfare services are actually provided by federal employees, although that’s the minority of situations around the country. The other scenario is for a state to provide the services, if a tribe has been transferred to the state through federal law or they have an agreement to share jurisdiction.

JM: Like anything else in child welfare, it sounds like things are complex and they differ significantly from state to state. Advocates need to know how their unique systems operate, but there’s probably no single rule for how they operate from state to state – would that be correct?

TC: That’s correct. Not only do things vary from state to state, they can vary between different tribes in a state. An example is right here in Oregon, where we have tribes with no state services on the reservation along with tribes for whom the state assumes jurisdiction. This complexity exists because there are multiple layers of federal policies that were enacted at different points in history, leading to some tribes being subject to state jurisdiction and others not.

SPARC: You mentioned that tribes also have a role off the reservations. Can you explain that?

TC: This is another complex issue. The federal government has a history in trying to assimilate American Indians – such as relocating people from reservations to urban centers and sending them to boarding schools for more than 100 years – for this and other reasons, two-thirds of American Indians today live off the reservation. There are American Indian and Alaska Native people in every state and in every city in the United States. Only 14 states have no federally recognized tribes but these states still have American Indian and Alaska Native people living in their borders.

A surprise to many people is that there are 32 Indian centers in major cities across the country that offer a wide array of services off the reservation. As I mentioned before, the jurisdiction of a tribe extends to its members even off of the reservation, so for example, a tribe can license one of its members to be a foster parent anywhere in the nation. Another aspect of this is that many tribes have very small reservations, but they have service areas that are much larger. Most federal laws are written for programs serving tribal members living on or near the reservation, so a tribe may license foster homes outside the boundaries of the reservation and even investigate child abuse and neglect jointly with a state or county near the reservation.

SPARC: Can you talk about the role that the Indian Child Welfare Act (ICWA) plays?

TC: ICWA was passed in response to some advocacy by tribes after research in the 1970s showed that one in every four Indian children had been removed from their homes, and 85-95% of those children were being placed in non-Indian homes. ICWA is designed to do several things. First, it's designed to protect a child's right as a tribal citizen. Second, it also empowers tribes to run their own child welfare systems. Tribes always had that right as sovereign state, but before ICWA there wasn't a strong mechanism for them to be able to do that. Third, the law sets up criteria that states must follow when they take an Indian child into custody. The law also protects the due process rights of parents and children, so that children aren't removed from their homes unnecessarily and families get the services they need.

The state obligations under ICWA include providing a notice to tribes when they take a tribal child into custody, providing active efforts to find a placement with Indian families, and following an order of preference for placement of the child that starts with the child's relatives. ICWA also gave tribes rights to intervene as a full party in state court anytime and anywhere in the nation that an American Indian child comes before the court. It also gave tribes the right to transfer jurisdiction to their own court, and the right to set their own placement preferences.

SPARC: Are there protocols, laws, or statutes that govern how the relationship between tribes and state and local jurisdictions works?

TC: Yes. One of the provisions of ICWA allows for tribal-state agreements, which can be focused on anything from funding to service provisions to resource sharing to jurisdictional issues. There are also local protocols that a county agency will develop with the tribe that describe how they're going to respond in situations where the jurisdictions blur. For example, for a child abuse investigation, the protocol might say that whoever gets the referral will call the other jurisdiction to jointly conduct the investigation. In some places, there is also cross-deputation of law enforcement officers so there's no jurisdictional confusion. There are also funding agreements and contracts so that county and state dollars pass through to tribes, and Title IV-E foster care agreements between tribes and states. Finally, a growing number of states have passed their own ICWA laws, which spell out in more detail how to implement the federal law.

SPARC: What do you think state child welfare advocates should be focused on when it comes to these issues? How can they support the work that you're doing at the state and tribal levels?

TC: One of the things we always talk about is how important it is to carry the message that ICWA should be the standard that all child welfare laws aspire to. Compliance with ICWA can be described as simply good casework practice. It is also really important that advocates push for compliance with other federal laws, particularly regarding diligent recruitment, relative searches, and differential response. And, finally, it is important to always advocate for equitable funding for a state or county to be able to achieve compliance. These things really work well when you are in open dialogue with the tribe, so it's important to reach out to your state's tribal child welfare directors and other stakeholders. Most tribes have websites so you can find those individuals, and if not, there is almost always a state Indian Child Welfare Manager who can help you connect with the tribal services.

SPARC: Can you tell us your thoughts about the recent so-called “Baby Veronica” Supreme Court case, and how this decision impacts the Indian Child Welfare Act.

TC: I think the most important thing to remember is that ICWA still is the law of the land. Despite some erroneous reports, ICWA was not overturned; it was a narrow decision regarding the circumstances of one case. However, the case law that comes behind the Supreme Court decision is still thrown out, so we’re seeing the impact of that decision on how jurisdictions across the country are now interpreting things like the placement preferences and the voluntary relinquishment of unwed fathers. So the decision without question puts more of our children at risk. NICWA is working really hard to strengthen state laws and tribal codes, because the federal law is set up as a minimum standard. Tribes can, and should, pass laws with a higher standard that must be enforced by the state. State advocates can help pass state ICWA laws like the ones in Wisconsin, Washington and Michigan that offer heightened protections. Tribes across the country are currently looking at passing their own codes reinforcing the placement preferences under ICWA.

SPARC: Terry, I’ll just give you one last opportunity to tell us any other policy issues that your organization is focusing on at this time and ones that state advocates might want to learn about.

TC: NICWA works to make sure that tribes have the resources to do this work, and since 1990, we have opened a number of funding streams to tribes that weren’t there before. We are fully supportive of the need for federal financing reform. Our focus is increasing the funding for in-home services and family preservation services and keeping as many children out of the child welfare system as possible. It is so important that tribes be able to provide things like Differential Response, especially in partnership with states, because disproportionality rates and placement for Native children are very high. Having more in home services for families and being able to comply with the active efforts provisions of ICWA will help reduce this disproportionality.

We also have a major effort regarding ICWA compliance. The Supreme Court case highlighted a lack of compliance around the country and some serious problems particularly in some jurisdictions. The other thing that the case revealed is that there are a number of unscrupulous and perhaps even illegal adoption practices going on, and we’re asking the Department of Justice to investigate these practices. We know that there is a systematic noncompliance of the law.

Finally, we continuously promote and encourage Native families to become foster parents. It is so important that we have more relatives and families step up, whether for a tribe or a state.

SPARC: We’re honored to have you as part of our national network and our national advisory board, and we appreciate your time this morning.

TC: We certainly appreciate the work you do, and you’ve been a wonderful partner for NICWA. So thank you very much.