

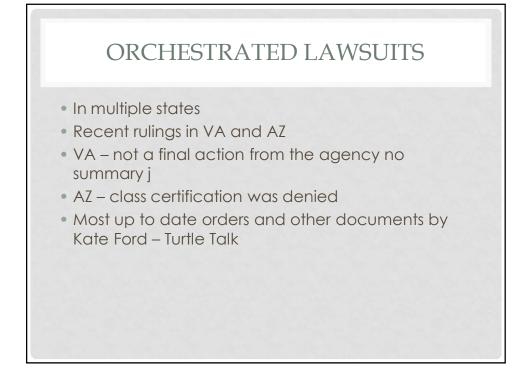


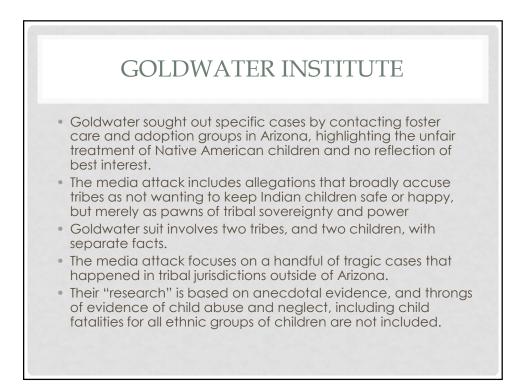
BEST INTEREST

- In child welfare law, the best interest analysis is a frequent test, but always complicated and subjective guess work and predictions, and when there are so few no Native Americans as judges, lawyers and social workers, the cultural piece is easily under-assessed.
- The guidelines re-affirm that the ICWA placement preferences are in the best interest of "Indian" children.
- Do most of the parties in the state courtrooms have any understanding of the cultutual impacts?

NO "EXISTING INDIAN FAMILY" FINDINGS

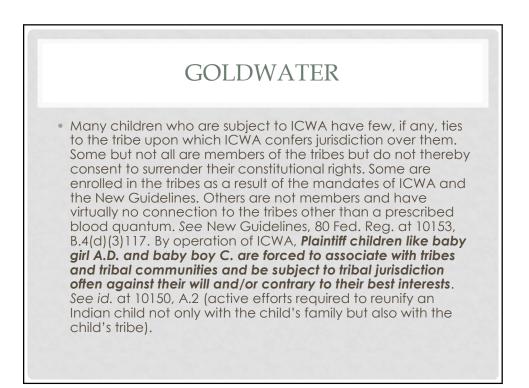
- Perhaps the most offensive, paternalistic, privileged judicially-created findings
- State judges and lawyers arguing over what constitutes "Indian" enough?
- A child is not subject to ICWA if they have never been to their reservation? Example: tribal reservation could be hundreds of miles away
- Non-Custodial parents are not enough to attach tribal connections?

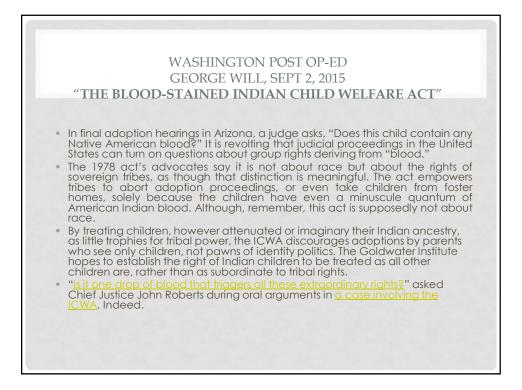


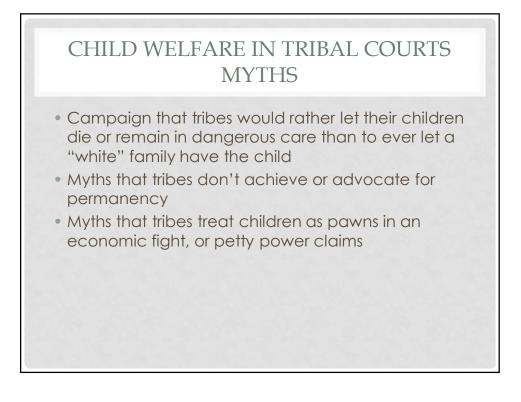


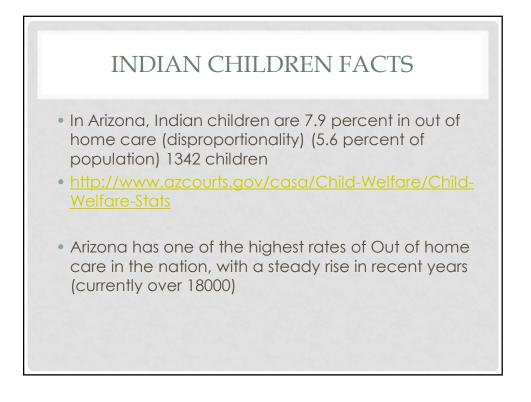
THE CLAIMS

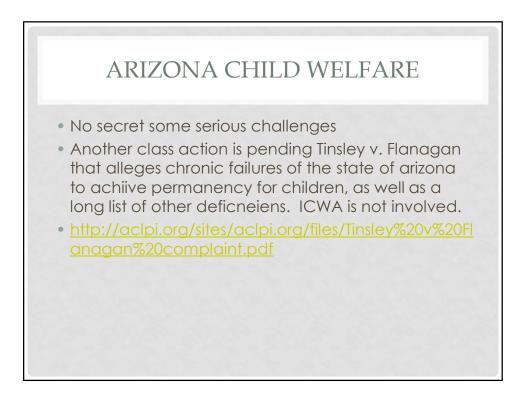
- Class Action
- Equal Protection
- Due Process (best interest eval) 5th amendment
- First Amendment
- "A child with Indian ancestry is not an item of commerce, nor an instrumentality of commerce, nor tangible personal property the possession of which byfederally-recognized Indian tribes promotes "Indian self-government." *Morton v. Mancari*, 417 U.S. 535, 555 (1974). Nor is a federal law dealing with child custody proceedings "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." *Id.*; *Rice v. Cayetano*, 528 U.S. 495 (2000)." Exceed fed gvt power via 10th amendment











MYTH: THE ICWA IS RACE-BASED AND UNCONSTITUTIONAL

- Indigenous "blood" is not the ICWA test, racial or genetic traits are not the test, and the way someone looks is not the test.
- While it is true, many tribes have blood quantum requirements for membership, the tribal membership question is different for every tribe as an exercise of sovereignty.
- Likewise, the ICWA is designed to support tribal sovereignty and sustainability by giving tribes opportunity to address child welfare issues over their children/members. Authority for law is based on based on <u>status of tribal membership</u>, not racial classifications.



CHILD DEATH CONTINUED

• An estimated 1,640 children died in 2012 as a result of abuse or neglect, mostly at the hands of parents. "Some children who died from abuse and neglect were already known to CPS agencies," the report states. "In 30 reporting states, 8.5 percent of child fatalities involved families who had received family preservation services in the past 5 years. In 35 reporting states, 2.2 percent of child fatalities involved children who had been in foster care and were reunited with their families in the past 5 years."

• U.S. Dept of Health Services Report, 2012

WHO IS ADVOCATING FOR THE ICWA ON THE GROUND?

- Native Americans in the judiciary are beyond underrepresented, but are in fact a true rarity.
- Native American attorneys are underrepresented in all state jurisdictions, and even more so in children's law, for children, parents, GALs, and sometimes even tribal representatives.
- Nationwide there are only approx. 2600 Native American attorneys. (1.6 percent of population, but only .5 percent of attorneys) – National Native American Bar Association Study
- Many tribes cannot afford to send any representative to proceedings, and when they can, it's often a non-lawyer.



- For purposes of the ICWA, the guidelines and the proposed regulations clarify that only the tribe can determine the child's eligibility.
- One challenge state courts and state agencies note is tribal delays and non-responsiveness.
- Some tribes have members who have unclear status do to roll audits, etc.



