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BEYOND BLACK AND WHITE: NATIVE AMERICAN REPRESENTATION IN
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BEYOND BLACK AND WHITE: NATIVE AMERICAN REPRESENTATION IN
NEWSPAPER MEDIA

A THESIS APPROVED FOR THE
DEPARTMENT OF NATIVE AMERICAN STUDIES

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To my parents for their unwavering belie

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Abstract

The media has the ability to shape public opinion and influence policy direction. The case of *Adoptive Couple v. Baby Girl* gained national attention as the ‘Baby Veronica’ case. The outcome of this particular custodial case involving the Indian Child Welfare Act (‘ICWA’) surprised many experts on the ICWA as well as those possessing general knowledge of Federal Indian Law. The purpose of this study is to examine whether a relationship exists between media representation of Native American issues and court opinions that shape Federal Indian Law. If so, what information can be learned to aid tribes and tribal advocates.

Five dominant themes were identified in the analysis of 25 articles from five different sources: 1) The ICWA is a raced based law; 2) Dusten Brown’s termination of parental rights; 3) adoptive couple’s rights; 4) best interest of the child; and 5) The ICWA’s congressional intent. These themes were then discussed in relation to the Supreme Court’s opinion. This study does not attempt to prove causation. Instead it is assessed for ways in which engagement with the media can be beneficial to tribes and tribal advocates.

Introduction

In recent years, Native American issues have appeared in news headlines in the form of casino gaming, mascots, headdresses, and child custody cases. The headlines are often sensationalized and the story content ranges from openly racist to culturally sensitive. Similarly, Federal Indian law ranges from openly racist to culturally sensitive, depending on the political climate. At times the only thing that appears to be consistent in Federal Indian Law is its inconsistency, leading to case outcome unpredictability. In attempting to understand the Federal Indian Law policies that have developed over the years, it is essential to keep in mind the political era of the time — e.g. removal, assimilation, allotment, termination, and self-determination. These eras serve as guideposts and lend reason to the unpredictable nature of Federal Indian Law. The question then becomes how does one determine current guideposts and predict policy shifts today? The answer: Media.

Historically the United States government has employed the use of media to shape American perception of Native Americans as a means of furthering a political agenda. This can be seen in the stereotypes regarding Native Americans as the ‘savage’, ‘noble Indian’, and ‘vanishing Indian’. As these stereotypes gain momentum they often find their way into the law. A prime example of this is established in the founding Native American property case *Johnson v. McIntosh*. In this case Chief Justice Marshall referred to Native Americans as savages.¹ The term savage implies uncivilized and therefore incapable of owning land in the way civilized societies do. Marshall used this savage classification to promote the Discovery Doctrine, giving white settler governments ownership of Indigenous land, thereby leaving Indigenous groups with

only an occupancy right to their homeland. Since this case numerous countries have adopted the Discovery Doctrine, thus highlighting the tremendous effect that media can play in shaping the perception and policies regarding Indigenous peoples.

Background

Much research has been done showing a correlation between the way issues regarding ethnic minorities are presented in the media and the way that members of the majority perceive ethnic minorities. However, much of the research done in this area focuses on African Americans and Latinos. While some of the studies have included Native Americans in their research of the effects of media on the perception of ethnic minorities, there is still a need for studies that concentrate on Native Americans specifically.

A study by Merskin was conducted as a means of “plac[ing] Native Americans in communication scholars” agendas within the context of research on all minority groups and to shift the focus of Native research to contemporary life.² Merskin’s study found that “[m]ost of the respondents were not satisfied with television programing” and that “only a handful of the shows included Native Americans in the story.”³ It further found that the handful of Native Americans represented on television were portrayed as historically based which “tend[s] to perpetuate the notion that Natives exist only in the past.”⁴ Such a notion is dangerous, and creates the idea that tribes and Native Americans no longer have a place in modern society.

A lack of media representation of Native Americans, combined with the tendency to present Native Americans in a historical manner, harms Native Americans

and society as a whole. It creates unnecessary burdens, causing Native Americans to feel unrepresented and alienated from mainstream society while most of society is rarely aware of Native American issues. This creates a problem when Native American issues are brought to the attention of mainstream society whose knowledge of Native Americans is limited by stereotypical representations.

Statement of the Problem

In 1978, the Indian Child Welfare Act (ICWA) was adopted in response to the disturbing number of Native American children who were being taken from their home and adopted into non-Native households. The widespread removal of Indian children from their homes is a reiteration of assimilation and termination policies that removed Indian children to boarding schools in the late nineteenth and early twentieth century.⁵ The closing of boarding schools did not end the systematic removal of Indian children from their homes. In 1958 – 1967, the Indian Adoption Project (‘IAP’) organized to adopt Indian children to non-Indian families. Not only were these children removed from their tribal community, they were often placed in homes located on the opposite side of the country. These placements were rationalized by IAP as a means of placing Indian children in environments that would be less racially hostile. The Adoption Resource Exchange of North America continued IAP’s practices into the early 1970s.⁶ At the time of the ICWA enactment, the adoption rate for Indian children was eight times that for non-Indians, and 90 percent of the adopted Indian children were placed in non-Indian homes.⁷

The practice of breaking up Native American homes and depriving Native tribes of their children can be best described as the ultimate form of termination; for without

children there is no future. In addition to the effect such adoptions have on Native American communities, the children adopted out of their tribe grew up deprived of their cultural heritage. The ICWA was enacted to help return a sense of security to Native American tribes and families. Under the ICWA, special measures are taken to ensure that the best interest of the child is protected and to keep the child within the tribal community, if possible.

In light of the reasons for adopting the ICWA, it is especially concerning that in 2013 the Supreme Court ruled against a Native American father in *Adoptive Couple v. Baby Girl*. This case caused a stir within the media and became known as the ‘Baby Veronica’ case. In this case, the birth mother, a non-Native woman, had arranged to have baby Veronica adopted. Upon learning of the adoption, the father filed for custody, arguing that the ICWA had been violated because he was not properly notified of the adoption as required by federal law. The case reached the United States Supreme Court after the Family Court of South Carolina in 2011 ruled in favor of the birth father, finding him to be a loving parent with deep cultural ties to the Cherokee Nation. When the adoptive couple appealed this ruling, Veronica had been living with her father in Oklahoma for a year. In 2013, two years after Veronica was united with her father, the Supreme Court overruled the lower court’s opinion. Thus, ‘Baby Veronica’ was placed with the adoptive couple in South Carolina.

Once the media caught drift of this case, ‘Baby Veronica’ became an overnight sensation. ‘Baby Veronica’ became breaking news and her picture began to appear on prime time television. The mass hysteria of this case was similar to that experienced during the OJ trials. Photos of ‘Baby Veronica’ with the caption “BREAKING NEWS”

gave the appearance of a missing child, which had the effect of causing mass concern for this little girl. A quick google search of “Baby Veronica Breaking News” pulls up images of a distraught white couple contrasted with what appears to be a mug shot of Veronica’s biological father. (Figure 1, below). In all actuality, Veronica was living with her father, whose mug shot picture was more than likely was taken while he served in the military.



Figure 1: Baby Veronica, Dusten Brown, and the Capobiancos

Television newscasters were not the only ones that hyped-up concern for ‘Baby Veronica’. The adoptive couple made television appearances on shows such as Dr. Phil, and conducted radio interviews. All forms of media were covering this case closely, including newspapers. It is interesting to note that the case was referred to as the ‘Baby Veronica’ case despite the fact that by the time the Supreme Court heard the case

Veronica was a toddler. This speaks volume to how the public became emotionally attached to this little girl and her fate.

Considering the news coverage of the ‘Baby Veronica’ case and the surprising verdict of the Supreme Court it would be beneficial to analyze how the media represented this case to the public. A content analysis of newspaper representation of the case will show if, and how, the Supreme Court decision was in line with the popular opinion as represented in the media.

Purpose of the Study

The purpose of this study is to assess the way in which Native Americans are being represented in the media in regards to the *Adoptive Couple v. Baby Girl* (‘Baby Veronica’) case. This study analyzed newspaper articles regarding the ‘Baby Veronica’ case in *The Washington Post*, *Indian Country Today*, *Cherokee Phoenix*, *The Post and Courier*, and *The Oklahoman*. These five newspapers were chosen as a general representation of national, state, and Native representation. From these five sources are five articles that address the ‘Baby Veronica’ case. A content analysis was then conducted to identify themes, patterns or biases.

Five dominant themes were identified as: 1) The ICWA is a raced based law; 2) Dusten Brown’s termination of parental rights; 3) adoptive couple’s rights; 4) best interest of the child; and 5) The ICWA’s congressional intent. These five themes were then compared to the Supreme Court’s opinion in *Adoptive Couple v. Baby Girl* in order ascertain if a relationship between media representation and court opinions exist.

Significance

Federal Indian law is a complicated, murky and unpredictable area of law. The stakes are always high yet the outcome is never predictable. Like most areas of law, e.g. abortion, gay marriage, segregation, Federal Indian Law is susceptible to change with public opinion. With the media being as influential as they are at shaping public opinion, it is imperative to understand how Native Americans are being represented.

Until recently, little research has been done on current Native American representation in the media. There is still a need to understand how media representation of Native Americans shapes public opinion, which in turn shapes Federal Indian Law. This need becomes imperative when one realizes that Federal Indian law often has the effect of reinforcing public opinion of Native Americans and stereotypes. This study seeks to identify if a relationship exists between media representation of Native American issues and the court opinions that shape Federal Indian Law. If so, what information can be learned to aid tribes and tribal advocates.

Review of Literature

Books, scholarly research and newspaper articles were compiled to gain fuller insight into the role media representation plays in shaping public perceptions. The review of literature first discusses the role that media plays in shaping public perceptions of minorities. These enlightening findings are followed by an explanation of the historical consequences of Native American stereotyping in the shaping of popular perception and government policy. The section concludes with a review of the ways in which current newspaper representations of Native Americans shape the public perception of Native Americans.

How Media Shapes Perception

“Previous content analysis shows that newspapers depict ethnic minorities as a general threat to society.”⁸ Further studies have expanded on this to determine whether exposure to such representation of ethnic minorities has an effect on the way that the readers perceive ethnic minorities (i.e. if ethnic minorities are portrayed as a threat are they also perceived as a threat?). A study conducted in the Netherlands set out to “establish whether the findings that exposure to certain television stations affects people’s attitudes toward ethnic minorities is also true of newspapers.”⁹ The study found that people who were exclusively exposed to a newspaper, which extensively reported ethnic crime, did in fact perceive minorities as a physical threat. This implies that newspapers can have an effect on perception, however the degree of such effect is still unclear, as is whether being exposed to more than just one form of media counters or perpetuates this phenomenon.

Once a correlation between the representation of ethnic minorities in mainstream media and its influence on the public's perception of ethnic minorities has been made the focus switches to the types of representations being made. Representing one as a 'threat' can come in many different forms. A group of people can be presented as criminal, a threat to national security or the economy, or simply a threat to society's way of life. Studies have been done on the current media representation of ethnic minorities that show that African Americans are disproportionately portrayed as criminals and underrepresented as protectors of the law.¹⁰ Such studies highlight the way that media can misrepresent the truth and create a false reality.

In 2003, Paula Poindexter and associates conducted a study to determine the racial makeup of local television news in selected U.S. cities. A content analysis of local newscasters found Latinos, Native Americans, and Asian Americans were virtually invisible as anchors, reporters, and subjects in the news. The study further found that ethnic minorities such as Native Americans, Latinos, and Asians were rarely interviewed as news sources, thus their perspective was often missing. The study did find that African Americans were represented more in comparison to other minorities perhaps as a result of research conducted during the late 1970s, which focused on the underrepresentation of African Americans.¹¹ While research such as this is needed there is a need for studies that focus specifically on Native Americans instead of grouping Native Americans, Asians and Latinos into the category as 'other', meaning neither black nor white.

In regards to the tactics used to influence public perception, a study conducted in 1999 found that news "frames played a significant role in the reader's thought-listing

responses, and they defined the ways that readers presented the information”.¹² This framework can be applied to the study of mainstream media’s to media’s representation of Native Americans. Themes in such representation would indicate that the readers would be more inclined to recall the issues presented according to the framing. Such influencing could expand beyond just the public and trickle up to lawmakers and judges. As members of society, lawmakers and judges are not immune to the influences of mainstream media. Consequently, if they have limited exposure of Native American issues the policies they help enact will inevitable lack adequate knowledge and understanding.

Native American Stereotypes and the Effects

There has been a “long-standing tradition of white hegemonic control over Native Identity.”¹³ In the United States hegemonic control is perpetuated through the media. Historically, Native Americans have been represented in the media in stereotypical fashion, often for the benefit of the U.S. government as a means of attaining a political agenda. *Native Americans in the News* by Mary Ann Weston chronicles depictions of Native Americans in the press. Weston shows how some images of Indians have persisted into the present, and ultimately calls for an inquiry into whether journalistic practices have helped or hindered accurate portrayals of Native Americans.¹⁴ Some recent research has taken up this task.

For instance, Richard King conducted a critical reading of the “Indian Wars” article. His analysis highlights the place of Indian stereotypes within Euro American and Native American communities. The articles focused on the depiction of Native

American mascots and found an intersection of race and power animating such mascots. King believes that such representations produces prejudice and terror encouraged by mascots and media coverage of them.¹⁵ Native Americans, themselves, are often critical and suspicious of mainstream newspaper representation of Native American issues, and instead turn to tribal newspapers for an accurate representation of the issues at stake. Consequently, the mainstream newspaper misrepresentation of Native issues is thought to “reflect[] negatively on community debate”.¹⁶

How Newspapers Shape Perspectives of Native Americans

The effects of media stereotyping of Native Americans are not relegated to the past. Current studies show that “[r]eaders learn to view an ethnic group not and in context, but rather as they are reduced in the language of the media.”¹⁷ In a study of local and state newspaper articles regarding Anishinabe spearfishing in Wisconsin, the authors found that state officials were quoted more than the tribe, the many different tribes involved were almost always referred to by the general term ‘Indians.’ Furthermore, state officials and representatives were always quoted before any Anishinabe representatives, and all articles supported the state’s position. Combined, these findings indicate “that those opposing Native spearfishing are official, important and correct, whereas the Anishinabe are nameless, insignificant and wrong.”¹⁸

In light of the often one-sided, frequently misrepresented presentation of Native American issues in mainstream media, it is imperative that Native Americans become active participants in journalism. The Native American Journalist Association, based at the University of Oklahoma, was founded with the mission “to improve

communications among Native people and between Native Americans and the general public”.¹⁹

Conclusion

When it comes to the effects of media representation of ethnic minorities, there is an obvious gap where Native Americans are concerned. Considering that much research has been conducted in the past regarding the underrepresentation of African Americans and the corresponding increased trend of African American representation it is imperative that research be conducted on Native American representation. Due to the complexities surrounding Native Americans and the United States government, there is a call for more representation of Native American issues as well as a new context in which to understand the issue. One way to ensure that Native Americans are being represented with accurate contexts, and not in stereotypical fashion, is increased self-representation such as NAJA.

Methodology

Research Design

A critical content analysis was utilized to highlight similarities and differences between the representations of Native Americans in mainstream newspapers versus tribal newspapers. The content analysis consisted of a critical reading of twenty-five newspaper articles in order to identify and analyze themes that emerged. This required a deep evaluation into how themes were presented, who is being quoted and how, chosen headlines, and the overall impression of the article.

A content analysis of twenty-five newspaper articles allowed for the discovery of trends regarding the way that Native Americans are presented to the public. These trends when continuously presented to the public ultimately shape public perception. By using a content analysis methodology, newspaper trends can then be analyzed for their core substance. Once an understanding of how Native American issues are being presented to the public emerges, a correlation can be drawn between Native American representation trends, public perception of Native Americans, and the shaping of Federal Indian legal policies. It is the cyclical nature of legal policy shaping media representation, which then shapes public perception, which in turn shapes legal policy that is truly fascinating. A content analysis of newspaper articles' representation of a Native American legal dispute will shed light on the cyclical nature of the public's perception of Native Americans and the shaping of Federal Indian Law.

Method

The study was conducted using a content analysis methodology in order to answer whether mainstream media perception of Native American issues corresponds

with Federal policies. Accordingly, data was collected in the form of newspaper articles regarding the Supreme Court Case *Adoptive Couple v. Baby Girl*. These articles were then analyzed in terms of how the headline is framed and what critical components of the case the newspaper focuses on such as tribal sovereignty, best interest of the child, biological father's parental rights, and rights of the adopted couple. The articles were furthered analyzed to determine the ways such trends are presented. In contrasting mainstream articles against tribal articles the differing ways these groups represent the case to the public emerged. Once these trends were identified a content analysis of the Supreme Court case *Adoptive Couple v. Baby Girl* was conducted in order to determine if a relationship existed between mainstream medias representation of the case and the Supreme Court's opinion governing the case.

Data Selection

Twenty-five articles were included in the sample. Five articles were selected at random from each of the following publications; *The Washington Post*, *Indian Country Today*, *Cherokee Phoenix*, *The Oklahoman*, and *The Post and Courier*. All articles were published between Nov. 25, 2011, and June 25, 2013. Both the publications and time frame were chosen to further the credibility of the study. This section explains the reasoning behind the selection of the five publications as well as the time frame.

In selecting the publications for the study it was important to include mainstream media that was representative of both national and state perspective. The use of mainstream media provided insight into the mainstream public perception of the case and the issues involved. It was important in this study to also include Native perspectives therefore Native publications were selected and utilized. By including both

mainstream and Native publications, themes were able to be compared and contrasted providing greater insight into how perceptions generated by mainstream media and Native communities are presented to the public.

Indian Country Today Media Network serves as a comprehensive national platform for Native voices and issues. The slogan “Serving the Nations, Celebrating the People” is located on *Indian Country Today’s* online website, synthesizing the paper’s mission in providing a voice for Native issues. With Native writers and reporters, covering topics from politics and world news to Native recipes, *Indian Country Today* provides the perfect resource for the Native voice at a National level. Even though *Indian Country Today* is revered among tribal members and advocates, the paper, for purposes of this research, is not considered mainstream media in that its circulation centers around native communities.

The *Washington Post* is based out of Washington, D.C.; as the nation’s capital, D.C. is entrenched in a political atmosphere. Accordingly, the *Washington Post* is perfectly situated to report on changing politics and policies as they occur. In 2015, the *Washington Post* reported a record setting 66.9 million readers in the month of October alone, placing the *Washington Post* ahead of the *New York Times* and *USA Today* in regards to readership. As such the *Washington Post* was selected for this study to represent a National mainstream media perspective.

The *Cherokee Phoenix* has a long rich history of reporting on all things Cherokee dating back to 1828, when the paper was printed in English and Cherokee. Historically, the paper had a front-row seat of what is today known as the “Marshall

Trilogy” and served as a strong advocate against the Indian Removal Act of 1830. The paper shut down in 1834 but was revived in 1975 under a different name. In 2000, the name *Cherokee Phoenix* was reestablished and today the paper has been revived with reports on Cherokee government, current events and Cherokee culture.

With Dusten Brown being an enrolled member of the Cherokee Nation, the tribe itself had a stake in the case. Considering the *Cherokee Phoenix*'s rich history and the Cherokee Nation's personal connection with the 'Baby Veronica' case, the *Cherokee Phoenix* was selected as a means of establishing the Cherokee Nation perspective of the case. Since the *Cherokee Phoenix* is a local newspaper of the tribe, despite its expansion into online media, this study does not is not classify the *Cherokee Phoenix* as mainstream media.

In order to include localized mainstream perspectives, the top publications from South Carolina and Oklahoma were selected. The South Carolina perspective is important because the case *Adoptive Couple v. Baby Girl* originated in South Carolina reaching South Carolina's Supreme Court before being appealed to the Supreme Court of the United States. As South Carolina's oldest newspaper, the *Post and Courier*, based out of Charleston, S.C., was selected in order to analyze how South Carolina's mainstream media presented the issues regarding the case. Likewise, *The Oklahoman*, the state's largest newspaper, was selected for an Oklahoman mainstream perspective.

This time frame was specifically chosen to correspond with South Carolina Family Court's final ruling of *Adoptive Couple v. Baby Girl* (Nov. 25, 2011) and the Supreme Court of the United States' opinion (June 25, 2013). The starting date was

chosen for a couple of reasons. First, the case did not gain much media attention until after the South Carolina Family Court ordered that Veronica be returned to Dusten Brown in Oklahoma. Second, the Family Court's order set up a legal framework for the case, which up until then would have been pure speculation. The ending date was chosen simply to ensure that the articles selected could be compared to the Supreme Court opinion in the hopes of determining the similarities of public perception and the final policy outcome. Articles printed after the Supreme Court's opinion would invariably be influenced by the opinion and thus would not serve as an accurate representation of the public's perception of the case.

Limitations

This study is limited in many ways by the fact that it is a small sample. First of all, the study only focuses on one Supreme Court case and therefore one issue. There are, in fact, many issues that are pertinent to Federal Indian law, but it would be impossible to take up such a monumental task. Furthermore, this study only deals with newspapers and does not delve into the realm of television and radio. This was done for practical reasons and because the written word lends itself easier to a content analysis since it is literally black and white and void of the human nuances such as tone and visual cues. Lastly the study is small in that it only analyzes five articles from five sources. The range of sources however was selected specifically to attempt to include a wide and differing set of views.

Conclusion

By analyzing the way mainstream newspaper media represents Native Americans and Native American legal issues further insight is gained into how

perception of Native Americans and Federal Indian policies are being shaped.

Understanding the inter-relatedness of media, public perception and legal policy will allow Native American tribes and their advocates to better navigate the complicated and often frustrating realm of Federal Indian Law.

Results

The results of this study are divided into four main categories; article title framework, presentation of the facts, representation, and themes. The theme section is further categorized by the five main themes identified: the ICWA is a raced based law; Dusten Brown's termination of parental rights; adoptive couple's rights; best interest of the child; and congressional intent. First, a brief history and the facts leading up to the case of *Adoptive Couple v. Baby Girl* is provided as a context for the analysis.

History of *Adoptive Couple v. Baby Girl*

Shortly after becoming engaged, Dusten Brown, a member of the Cherokee Nation, and Christina Maldonado, a non-Indian mother of two, learned that they were pregnant. A few months later Maldonado broke off the engagement, diminishing their relationship and communication to text messaging. Maldonado later sent Brown a text message asking him if he would rather pay child support or relinquish his parental rights. Brown replied that he would rather relinquish his parental rights.

A few months after this conversation, Maldonado began the process of putting their unborn child up for adoption. Without Brown's knowledge, Maldonado selected Matt and Melanie Capobianco, a non-Indian couple from South Carolina. While preparing for the adoption, Maldonado's lawyer provided the Cherokee Nation with a form inquiring whether the child was eligible for tribal membership. However, the attorney misspelled Dusten Brown's name and provided the wrong date of birth. Based on the information provided, the Cherokee Nation replied that the child was not an Indian child and therefore the ICWA did not apply.

The Capobiancos were present for the birth of Veronica, and Matt Capobianco cut the umbilical cord. In the days following the birth of ‘Baby Veronica’, the Capobiancos took the little girl home to South Carolina. Four months later, the Capobiancos served Dusten Brown with adoption papers, which he signed upon receipt. The next day, Brown consulted a lawyer and began the process to challenge the legality of the adoption under the Indian Child Welfare Act. A week later Dusten was deployed to Iraq putting much of the case on hold until he returned from service.

On Nov. 25, 2011, the South Carolina Supreme Court ruled in favor of Dusten Brown, finding him to be a fit Indian parent under the ICWA. ‘Baby Veronica’ was returned to Brown a month later. The Capobiancos appealed the decision to the South Carolina Supreme Court which upheld the lower court’s decision. The case was then appealed to the United States Supreme Court. On June 25, 2013, the U.S. Supreme Court reversed the lower court’s opinion. ‘Baby Veronica’ is now living with the Capobiancos in South Carolina.

Article Title Framework

The title of an article has immense power in shaping the reader’s perspective. Since the title is the first thing a person sees, the title is often written in a way that grabs the reader’s attention and draws them in. Upon first glance, the title of an article starts to implant a particular perception upon the reader “by directing the reader’s attention to an aspect of the story, by highlighting the topic in a non-objective, yet intriguing way, by oversimplifying the full text content, while consistently masking other ‘relevant’ information.”²⁰ In light of the brevity of article titles, it is impossible for the title to

convey all the relevant facts to the reader. The fact that headlines and article titles are designed so that they can be briefly skimmed over by readers suggests that many readers will only read the the title, thus their perception of the issues conveyed is limited to the presentation of the article.

All of the article titles were initially analyzed and divided into two categories: neutral and non-neutral. To be neutral, the title had to be void of personal opinion or what may be considered “flashy” wording. A neutral title alone does not draw emotion from the reader, but instead states the facts simply and plainly. For example, “South Carolina Supreme Court denies rehearing in custody case”²¹ reads as a non-biased factual statement and does not by itself elicit a particular response. Non-neutral titles on the other hand evoke emotion in the reader, utilizing colorful language to draw the reader in. “Indian Welfare Act Harms Many Children”²² is an example of a non-neutral title. In this study non-neutral includes all titles that elicit an initial opinion of the case, regardless of the type of opinion being communicated (e.g. in favor of or against ICWA).

	Neutral	Non-Neutral	Pro ICWA	Against ICWA
<i>Post and Courier</i>	3	2	0	2
Oklahoman	2	3	0	3
Washington Post	3	2	0	2
Indian Country Today	2	3	3	0
Cherokee Phoenix	5	0	0	0

Table 1: Article Title Analysis

Fifteen out of 25 newspaper articles were found to be neutral. The Cherokee Phoenix is the only publication that reported all of its titles in a neutral fashion. The breakdown of neutrality was fairly even throughout the remaining publications, with two or three of the titles being neutral while two or three of the titles were found to be non-neutral. These findings only become significant when one analyzes the non-neutral titles for their specific point of view and overall perception of the issues surrounding the ‘Baby Veronica’ case.

For purposes of this study the *Post and Courier*, *Oklahoman*, and *Washington Post* were selected to measure mainstream media’s perception at a state and national level. Interestingly, all three publications, while evenly reporting the case in terms of neutral and non-neutral titles, presented non-neutral titles in a manner that framed the story as ‘against ICWA.’ In comparison, *Indian Country Today* framed non-neutral titles in way that was perceived to be ‘pro ICWA,’ almost as a direct response to the presentation by mainstream media. On the other hand, the *Cherokee Phoenix* remained completely neutral perhaps due to the tribe’s understanding of the ICWA as a forum for Native American sovereignty. Of course, title analysis only presents initial presentations, which are often found to be simplistic. Further analysis of the remaining text is needed in order to gain insight into how this case was presented to the public in terms of pertinent issues.

Presentation of the Facts

A pattern appeared, while reading the articles, in which each article attempted to present the pertinent facts of the case (e.g. South Carolina Family Court ruling in favor

of Dusten Brown) into one sentence. The way each article presents the issue influences the reader's perspective of the issue. Child custody cases, such as the 'Baby Veronica' case, are filled with emotional turmoil on both sides. Both Dusten Brown and the Capobiancos care very much for Veronica and are fighting for the right to keep her. Due to the adversarial nature of the court system one is ultimately the winning party and one is the losing party. Each article presented the pertinent facts of the case in a way that clearly advocates who the winning and losing party should be.

In one article, the *Post and Courier* presented the issue as "A court battle over 2-year-old Veronica began when she was just four months old and ended on New Year's Eve, with her in a car seat headed to Oklahoma and the adoptive parents who raised her walking away childless."²³ Such framing invokes sympathy and outrage in the reader on the behalf of the Capobiancos. This message is in stark contrast to the one presented by *Indian Country Today*, "Baby Veronica, a 2-year-old Cherokee girl adopted by non-Native parents in 2009, will remain with her biological father following a South Carolina Supreme Court ruling file July 26 that upholds the 1978 Indian Child Welfare Act." By analyzing the way each publication presented the issues, a greater understanding of how readers came to understand the pertinent facts of the case is gained.

The mode of analysis was similar in the method utilized in analyzing the article titles. First the article was read for one or two sentences that attempted to set up the facts of the case. These sentences were first categorized as either neutral or non-neutral. The non-neutral sentences were further categorized into pro ICWA or anti-ICWA. To be considered pro ICWA the sentence must have contained some or all of the following:

Advocating for ICWA to be upheld, favoring biological father over adoptive couple. While anti-ICWA sentences referenced race, called for changes to ICWA, favoring adoptive couple over biological father.

	Neutral	Non-Neutral	Pro ICWA	Anti ICWA
<i>Post and Courier</i>	0	5	0	5
Oklahoman	2	3	1	2
Washington Post	2	3	0	3
Indian Country Today	0	4	4	0
Cherokee Phoenix	3	2	2	0

Table 2: Presentation of the Facts Analysis

The results found that mainstream media (i.e. *Post and Courier*, *Oklahoman*, *Washington Post*) reported the pertinent facts of the case in a non-neutral fashion 11 times out of 15. Out of these 11 non neutral titles, all but one of the articles represented the facts as ‘Anti ICWA’. The one article from the *Oklahoman* that presented the case in a “pro ICWA” context was written by Terry Cross, a member of the Seneca Nation. Terry Cross’s article was printed in the ‘Point of View’ section and was a direct response to recent article in which “The *Oklahoman* cited its application in South Carolina’s Baby Veronica case, characterizing it as creating “roadblocks” between Indian children and loving homes, and focused on an antiquated notion of race.”

One article from *Indian Country Today*, did not present the facts of the ‘Baby Veronica’ case but instead served as a criticism of Dr. Phil’s Oct. 17, 2012, show featuring horror stories of couples trying to adopt Indian children and the negative effect the ICWA had on the process. In the article, Donna Loring highlights the lack of

understanding in regards to the Indian Child Welfare Act and history that prompted Congress to take necessary measures in order to put an end to the historical taking of Indian children. Despite the article's clear opinion that ICWA is grossly misunderstood and is in fact a positive and necessary statute, it was not included in the analysis because it didn't include the 'Baby Veronica' case.

Representation

The idea of who speaks first in an article is important because it subconsciously implants a hierarchy in the reader's mind. Rationally, an article is set up to present the most important facts first and thus the most important parties will be mentioned first.

A quick analysis of who was quoted first was insufficient in determining the perceived hierarchy for a number of reasons. The main reason involved the manner in which the quote was utilized. Writers will often start an article with a quote from the opposing side to illustrate a point contrary to the opposing party's views. This method of writing is most effective in critical articles and is a means of grabbing the reader's attention. For this reason, the quotes were analyzed for their overall effect, meaning whether the quote was utilized for the adoptive couple perspective or the biological father/ tribe perspective. Articles that did not contain quotes, such as opinion pieces, were regarded as one large quote from the author and analyzed as such.

	Adoptive Couple	Biological Father/Tribe
<i>Post and Courier</i>	4	1
Oklahoman	4	1
Washington Post	5	0
Indian Country Today	0	5
Cherokee Phoenix	1	4

Table 3: Who Speaks First Analysis

Again, the article entitled *Dr. Phil's Horror Show* published by *Indian Country Today* is an outlander, in that no quotes were used to advocate either side of the 'Baby Veronica' case. However, the article is clearly written from a tribal sovereignty perspective and thus was categorized accordingly. In one article by the *Washington Post* Editorial Board, the article does not contain a single quote. However, the article is clearly positioned from the Capobiancos' point of view, going so far as to state "If the justices rule against the Capobiancos, Congress should step in and fashion some sensible limits to the Indian Child Welfare Act." Therefore, the article was considered to be from the adoptive couple's perspective.

Thirteen out of 15 mainstream articles positioned quotes from the adoptive couple's perspective first, creating a hierarchy in which the adoptive couple's rights are superior to the biological father and tribe. Tribal newspapers, on the contrary, emphasized the positions of the biological father and the Tribe on the issues by quoting their sides before the adoptive couple nine out of 10 times.

In the mainstream media, almost all of the articles at least touched upon the claims being made by the adoptive couple and the biological father. However, only four articles included representation of the Cherokee Nation and only three included representation of tribes in general. By only including the adoptive couple and biological father's arguments tribes are left out of the conversation and their rights are never fully understood by the general public.

Themes

In a society plagued by historical and present day racial injustice, it is easy to see how those unfamiliar with Federal Indian law and tribal sovereignty can view the Indian Child Welfare Act as a race-based statute. The ICWA was enacted for two main reasons: 1) to protect Indian children from the widespread epidemic of being separated from their family and tribe, and 2) to protect tribal sovereignty. However, mainstream media changed the topic away from tribal sovereignty and the protection of Indian children. Five main themes were identified while analyzing the articles: 1) The ICWA is a race-based law; 2) Dusten Brown terminated his parental rights; 3) The adoptive couple's rights; 4) Best interest of the child; and 5) Congressional intent of the ICWA. Each of the themes are examined and discussed below.

ICWA is a Raced-Based Law

The Indian Child Welfare Act is triggered in cases that involve members and eligible members of federally recognized tribes. The Cherokee Nation is a federally recognized Indian tribe, therefore the ICWA applies to the adoption of Cherokee Nation members and eligible members.²⁴ Tribal membership requirements differentiate between tribes due to each tribe's sovereignty and right to self-governance, which

inherently includes the right to determine tribal membership. To be a Cherokee Nation citizen applicants must be able to trace their ancestry back to “at least one direct Cherokee ancestor listed on the Dawes Final Rolls”.²⁵ The Cherokee Nation does not require a certain blood quantum like many other tribes but instead chooses to focus membership on ancestry.²⁶

Mainstream media presented the issue of whether the ICWA applies to the adoption of Veronica as whether she was Cherokee enough, often citing that Veronica is only “3/256th Cherokee”. *The Oklahoman* quoted Jessica Munday, the Capobiancos’ unofficial spokeswoman, as describing Veronica’s multiracial ethnicity as “more Latino than anything else”²⁷, implying that her Latino roots somehow negates her ancestral linkage to the Cherokee Nation, thereby eliminating the application of the ICWA.

In another attempt to confuse the issue, Dusten Brown’s citizenship was called into question when “[a]n attorney for the Capobiancos argued that Maldonado, who had been engaged to Brown, said he never spoke of his Native American heritage, never invited her to tribe events and never exposed her to Cherokee food or folklore.”²⁸ In some instances, the reference to race was subtle, for instance instead of stating that Dusten Brown was a member of the Cherokee Nation, articles would describe him as “part Cherokee”. Again mainstream media presented the issue as whether Dusten Brown and his daughter, Veronica, are Cherokee enough for the ICWA to apply, thus turning a sovereignty issue into a racial one.

This argument is not uncommon in Federal Indian law and ultimately stems from society’s historical tendency to racially stereotype ‘others’ — e.g. African American, Hispanics, Native Americans. In 1913, the United States Supreme Court

described Native Americans as, “[a]lways living in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetishism, and chiefly governed according to crude customs inherited from their ancestors, they are essentially a simple, uniformed and inferior people.”²⁹ This is just one instance of racial stereotypes towards Native Americans finding their way into legal opinions.

The misunderstanding of the ICWA being a race-based law was not limited to those without a legal education. Even Chief Justice Roberts seemed confused as to how and why the ICWA is triggered. Roberts questioned the application of the ICWA by asking, “Is it one drop of blood that triggers all these extraordinary rights?” It is a valid question in a society with little to no knowledge of Federal Indian Law combined with an overtly racial sensitivity, stemming from years of racial oppression.

Dusten Brown Terminated His Parental Rights

The theme that Dusten Brown terminated his parental rights was presented in many different forms throughout the examined articles. The media attempted to paint Dusten Brown in a negative light by focusing on the fact that Dusten Brown allegedly terminated his parental rights through a text message. If true, the relinquishment of parental rights before a child is born adds to the position that Brown did not want to raise his daughter and only contested the placement of Veronica with the Capobiancos after they had established a happy home together.

The issue was framed as a classic he said she said situation. In an attempt to appear neutral to both parties, some articles included Brown’s claim that when he sent the text in question he believed that he was surrendering his parental rights to the

biological mother and not consenting to an adoption. The focus on the text message, and of Brown's intent while sending it, clearly positions the text message as a pertinent legal issue in the case. The reader is left questioning whether Brown terminated his parental rights before Veronica was born. If so, did he lose the right to contest the adoption?

Under the ICWA the answer is clear. As part of "the establishment of minimum Federal standards for the removal of Indian children from their families"³⁰ Congress established clear guidance for the voluntary termination of parental rights. The statute reads in part:

Where any parent...voluntarily consents to a ... termination of parental rights, such consent *shall not be valid* unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certification that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent ... And *consent given prior to, or within ten days after, birth of the Indian child shall not be valid.*³¹

A text message terminating parental rights would in no way meet the requirement of being "executed in writing and recorded before a judge".³² Furthermore, because the text message occurred before Veronica, an Indian child, was born, the consent to terminate parental rights is void.

The media was not alone in its condemnation of Brown's text message. Justice Kittredge chided the South Carolina court for finding Brown to be a fit parent stating, "The reality is Father purposely abandoned this child and no amount of revisionist history can change that truth." This argument ignores Congress's specific contemplation of circumstances in which a biological parent may voluntarily terminate their parental

rights and then revoke “for any reason at any time prior to the entry of a final decree of termination or adoption ... and the child shall be returned to the parent.”³³

Adoptive Couple’s Rights

As the research indicates, mainstream media overwhelmingly presented the ‘Baby Veronica’ case from the Capobiancos’ perspective. The Capobiancos were consistently referred to as Veronica’s adoptive parents, terminology originating from the adoption case name *Adoptive Couple v. Baby Girl*. By referring to the Capobiancos as Veronica’s adoptive parents the media led the general public to naively believe that the adoption was already finalized and that the ICWA was breaking up an already established family. In fact, the Coalition for the Protection of Indian Children and Families insist that the removal of ‘Baby Veronica’ from the Capobiancos’ home is an example of how “[t]he very intent of the law is being compromised by how it’s being used.” The coalition went on to say, “This federal law was originally established to protect families and Indian children – not destroy them,” suggesting that the family being destroyed is the Capobiancos.³⁴

The fact that Dusten Brown challenged the adoption before it was finalized and requested that Veronica be placed with his parents while he was deployed to Iraq for seven months was downplayed. Instead, the media presented Brown as an unwed father who only recently claimed his parental rights. As such, his rights were subordinate to the Capobiancos who raised Veronica until the age of two.

Both Dusten Brown and the Capobiancos have point of views that are headline worthy. Dusten Brown is a proud member of the Cherokee Nation who was deprived of

the opportunity to raise his newborn daughter right before he deployed to Iraq. The Capobiancos are a couple who raised Veronica from the time she was born until she was two years old. Both stories are heart wrenching and both would have sold many newspapers. Yet the Capobiancos' story was promoted by mainstream media. Their story was made all the more sensational by the fact that the Capobiancos previously had seven failed in-vitro fertilization attempts.

This deeply personal information about the Capobiancos gained sympathy for the couple while showing how deeply the couple wants a family. Combined with the fact that the couple supported Veronica's mother financially and even cut the umbilical cord, readers were given the impression that the Capobiancos were clearly the ideal adoptive parents. Such a perspective stood in stark contrast to the presentation of Dusten Brown as a father who was not present at the birth nor did he supply child support. These facts were presented in a way that promoted the Capobiancos as wonderful parents and Dusten Brown as little more than a sperm donor.³⁵

Considering all the facts of the case, it is interesting to see mainstream media's representation of the Capobiancos' rights as potential adoptive parents placed above the rights of a biological father. Many of the articles were quick to point out that under state law in South Carolina and Oklahoma, were it not for the ICWA, Dusten Brown would not have had the ability to challenge the adoption as a non-custodial unwed father. Instead of questioning state adoption laws' devaluation of a parent's right to raise their biological child, mainstream media promoted the Capobiancos' rights as potential adoptive parents. Justice Sotomayor said it best in her dissenting opinion regarding the prioritization of the adoptive couple's rights above the biological parent's rights: "We

must remember that the purpose of an adoption is to provide a home for a child, not a child for a home”.³⁶

Best Interest of the Child

After the South Carolina Family Court’s decision striking down the adoption of Veronica, Jessica Munday, unofficial spokeswoman for the Capobiancos, was quoted as saying “We only want what is best for her,” in response to the Capobiancos’ attempts to appeal the ruling and ultimately take the case up to the Supreme Court. The ‘best interest of the child’ is the standard applied under state law when determining the removal of a child from one custodian to another. By enacting the ICWA congress took into account the best interest of the child doctrine and structured the statute accordingly. Under the ICWA a determination “that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child”³⁷ must first be found before the child is placed in foster care or a termination of parental rights is ordered.

Other articles cited Capobiancos’ lawyer Lisa Blatt’s characterization of the ICWA as depriving Veronica of the right “to be treated as a unique, multiethnic individual whose best interests are not inexorably dictated by her blood connection to a tribal member”. Charles A. Rothfield, attorney for Dusten Brown, contends that the South Carolina court correctly “found ICWA should be applied to allow a natural father to raise his child,” finding it to be “in the best interest of the child ... because that parent [Brown] was a fit, was a loving, was a devoted parent.”³⁸

Congressional intent of ICWA

This case presented a perfect opportunity for the public to address the ICWA compliance and the devastating effects of noncompliance. Instead, many articles argued that the application of the ICWA has overstepped, or outgrown, its congressional intent. The media and Lisa Blatt argue that the ICWA as applied has been perverted into a racial statute that prevents the interracial adoption of abandoned Indian children. They argue that “Congress could not have wanted the law to be interpreted as putting the interests of the father and the tribe ahead of the child simply because of her race.”³⁹

In reality, it was these news stories that perverted the congressional intent of the ICWA. By flashing the words ‘congressional intent’ and following it up with ‘abandoned children,’ ‘one drop blood,’ ‘banning interracial adoption,’ ‘based on race’ an image of injustice begins to immerge leading to protest demanding that the ICWA be reformed or struck down. In the chaos, discussion of whether Congress’s intent of protecting tribes from the loss of Indian children is being fulfilled and if not, why?

Many of the articles blamed the ICWA for the high number of Indian children in the foster system and characterized the ICWA as a roadblock to the adoption of Indian children. In an article printed by the *Oklahoman*, the author brings to light the discrepancy between the number of Native American children available for adoption compared to the percentage of the Native American population in Oklahoma,

As of the end of June, there were 2,077 children in state custody available for adoption. Of that total, 358 were American Indian, about 17 percent. But just 8.9 percent of the Oklahoma population is American Indian, according to the Census Bureau, meaning a disproportionate number of children awaiting adoption must place their hope on finding parents from a relatively small sliver of the adult population. Sadly, having “one drop of blood” could make the difference between adoption and remaining adrift in the system.

In an article discussing the ‘Baby Veronica’ case the above quote is misplaced for a multitude of reasons and is only included to convince the reader that the ICWA is an out of date race-based law that hinders Native American children.

The author is clearly blaming the ICWA for all the Native American children in Oklahoma who “remain adrift in the system.” However, it is more important to first address why 17 percent of the children available for adoption are Native American, while Native Americans only represent 8.9 percent of the Oklahoman population. Without such discussions the reader is led to believe that Native American children are abandoned and put up for adoption at higher rates instead of opening up a dialogue as to the cause – e.g. forced removal, cultural differences, higher rates of poverty, alcohol and drug abuse.

Secondly, the quote is misplaced in the discussion of ‘Baby Veronica’ because it focuses on the odds of Oklahoman children available for adoption actually being adopted by Oklahomans. However, this case involves a couple from South Carolina adopting a Native American child from Oklahoma, a Native American child who has never been “adrift in the [foster] system.” Furthermore, the quote ignores the fact that Dusten Brown is a Native American father in Oklahoma seeking custody of his own child. Veronica is not a little girl “adrift in the system” nor would she “remain adrift in the system” if her adoption by the Capobiancos was prevented under the ICWA.

Conclusion

It is clear from the study that mainstream media presented the facts of the ‘Baby Veronica’ case in a way that devalued the ICWA and promoted the adoption of Veronica by the Capobiancos. This was accomplished in multiple ways including by

categorizing the ICWA as race-based, emphasizing Dusten Brown's relinquishment of parental rights, promoting the Capobiancos as ideal parents, insisting that there was not a determination of the best interest of the child, and stressing the perversion of the ICWA's congressional intent.

The differences between mainstream media and Native newspapers' presentation of the facts is striking and speaks volumes to the different perspectives. The most striking difference is the representation of the Cherokee Nation and tribes in general. Virtually all the articles written by *Indian Country Today* and *Cherokee Phoenix* included representation of the Cherokee Nation and or references to tribal sovereignty. However, only four out of 15 of the mainstream articles included representation from the Cherokee Nation and only three of the articles contained representation of tribes in general. This treatment by mainstream media is consistent with the belief that Native Americans and tribes are invisible.

As the study indicated, most mainstream media articles presented the issues of the current case from the perspective of the adoptive couple often misstating the facts in the process. Consequently, native newspapers, like *Indian Country Today*, dedicated many of their articles to repudiating the facts presented by mainstream media. In fact, four out of five of the articles reviewed from *Indian Country Today* focused on critiquing mainstream media's (e.g. *Washington Post*, *New York Times*, *Dr. Phil*) misrepresentation of the facts of the case. This dilemma is indicative of a larger issue plaguing Native American activists and policy makers, who must first delve into the historical injustices surrounding Federal Indian law and explain concepts such as sovereignty, self-determination, and political status. The tribal advocates involved in the

'Baby Veronica' case found themselves in this exact position, being forced to first surpass the engrained stereotypes surrounding the issues at hand before a meaningful discussion of the true intent of ICWA could be conducted.

From Media to Policy

Since Congress enacted the Child Indian Welfare Act in 1978, the United States Supreme court has only heard one other case regarding the application of ICWA.⁴⁰ Many people assumed that this was due to the clear congressional intent of Congress while enacting the law. Leading to the theory that the media frenzy surrounding the ‘Baby Veronica’ case prompted the Supreme Court decision to hear a the ICWA case after so many years of remaining silent on the issue.

The following section analyzes the majority opinion, as delivered by Justice Alito, and Justice Sotomayor’s dissenting opinions. The two opinions are analyzed in terms of the five themes identified in the newspapers: 1) The ICWA is a race based law; 2) Dusten Brown terminated his parental rights; 3) The adoptive couple’s rights; 4) Best Interest of the Child; and 5) Congressional intent of the ICWA.

Majority’s Treatment of the Facts

The belittlement of tribal sovereignty and the exclusion of the Cherokee Nation from the discussion of the ‘Baby Veronica’ case was as prevalent in the Supreme Court Case as it was in mainstream media. The Cherokee Nation was denied their own time during oral arguments at the Supreme Court. As a sovereign entity, the Cherokee Nation was in a unique position to answer questions regarding how tribal membership is determined and whether there are systems in place to prevent a tribe from having a zero percent blood requirement, as Chief Justice Roberts inquired during oral arguments. As the only party who would be affected by the outcome beyond just this case, the Cherokee Nation had every right to be heard during oral arguments. The exclusion of

the Cherokee Nation is indicative of society's tendency to leave tribe's out of the historical narrative.

The opening paragraph of the Supreme Court's opinion is strikingly similar to the representation of the case in mainstream media, it focuses on race and highlights the emotional hardship the case has caused for the Capobiancos.

This case is about a little girl (Baby Girl) who is classified as an Indian because she is 1.2 percent Cherokee. Because Baby Girl is classified in this way, the South Carolina Supreme Court held that certain provisions of the Indian Child Welfare Act of 1978 required her to be taken, at the age of 27 months, from the only parents she had ever known and handed over to her biological father, who had no prior contact with the child.⁴¹

By positioning the facts in this way the supreme court unnecessarily draws into question the race of Veronica. In a footnote the Supreme Court explains that Veronica's status as an Indian Child is uncontested and further explains that the Cherokee Nation determines membership through ancestral lineage (i.e. blood quantum is irrelevant). Similarly, the court characterizes the application of the ICWA as placing "certain vulnerable children at a great disadvantage solely because an ancestor – even a remote one – was Indian".⁴² The court goes on to find that if the ICWA was applied in this way it would be a violation of equal protection. This treatment of race and tribal sovereignty is completely consistent with the representation in mainstream media; where the issue of race is pushed front and center while sovereignty is treated as a footnote.

In applying the Congressional intent of the ICWA to the facts of the case, the majority conveniently and consistently reads out tribal sovereignty. Justice Alito sums up the ICWA's primary goal as "preventing the unwarranted removal of Indian children and the dissolution of Indian families". He arrives at this finding by citing the House of Representative Report which states that "[t]he purpose of [the ICWA] is to protect the

best interest of Indian children and to promote the stability and security of Indian Tribes and families”⁴³ Despite Congress’s intent to protect Indian Tribes, children, and families, the majority opinion did not consider the consequences and effect of their ruling on ‘stability and security of Indian Tribes’.

Furthermore, the court does not have the power to define what constitutes a Native American family. The power to define tribal membership and to regulate self-governance rests with the tribe as part of its inherent sovereignty, which was acknowledged by Congress in their passage of the Indian Self-Determination Act. Under this context the United States Supreme Court violated the rights of the Cherokee Nation in two circumstances: 1) by finding that Dusten Brown is not a ‘parent’ under §1912(f) of the ICWA because he did not have custody and 2) determining that there was not a breakup of an Indian family because there was not a prior relationship. Both of these determinations implicitly require that the court determine the definition of Indian family, which is not within the court’s power. The court is able to arrive at this decision by “focus[ing] on the perceived parental shortcomings of Birth Father”.⁴⁴

The majority seems consistently concerned that the South Carolina’s interpretation of the ICWA would become a trump card by placing the rights of a noncustodial Indian parent above those of adoptive parents. The court believes that this would cause “many perspective adoptive parents [to] surely pause before adopting any child who might possibly qualify as an Indian under ICWA”⁴⁵ The court however fails to justify why taking time to pause and ensure that all possible precautions are taken before an Indian child is adopted out of their tribe is inconsistent with the congressional intent of the ICWA.

Dissent's Treatment of the Facts

Unlike the majority the dissent finds that the ICWA was clear in its broad definition of 'parent' to mean "*any* biological parent . . . of an Indian child".⁴⁶ Furthermore, the dissent contends that biological parents have a "right to the companionship, care, custody, and management of his or her children".⁴⁷ Such a right "must be honored, irrespective of perspective adoptive parents' understandable and valid desire to see the adoption finalized. 'We must remember that the purpose of an adoption is to provide a home for a child, not a child for a home.'"⁴⁸ Unlike the majority opinion and mainstream media, Sotomayor correctly positions the rights of a biological father above the mere desire of a couple to become adoptive parents.

In terms of congressional intent, Sotomayor points to the abusive welfare practices that initiated the need for the ICWA in order to protect the unjustified termination of parental rights by removing Indian children from their Indian families. These removals were often the result of unfamiliarity of tribal customs and the arrogant belief that a particular family construction is what is best for all children.

The dissent also debunks the theme that the ICWA interfered with the adoption of Indian Children. According to mainstream media and the majority there is a growing concern that ICWA is a roadblock to the adoption of abandoned Indian children, on the contrary the ICWA, is devised in a manner that seeks reunification of families and provides remedial procedures when necessary. Furthermore, the congressional intent of ICWA was to stop the unjustifiable and unnecessary removal of Indian children from their families, thus significantly lowering the likelihood that Indian children will end up in the foster system. If an Indian child is removed from the home the ICWA sets

preferential standards for the adoption of the child. The fact that the preferential standards exist showcases the ICWA's intent in placing children in a stable home as opposed to remaining adrift in the system.

Lastly, the dissent provided the strongest, and only, advocacy of Tribal rights: "A tribe's interest in its next generation of citizens is adversely affected by the placement of Indian children in homes with no connection to the tribe, whether or not those children were initially in the custody of an Indian parent."⁴⁹ Tribal sovereignty is key in the finding that the ICWA is not a raced based law because tribes are "independent political entities" with the power to determine membership requirements.⁵⁰

Summary

The majority presented the case in accordance to the way mainstream media represented the facts. Emphasis was placed on Dusten Brown's relinquishment of his parental rights/duties allowing the court to find that the heightened burden of proof for removal did not apply to him because he never had custody of Veronica. The court further sympathized with the supposed hardships that the ICWA creates for adoptive parents and expressed concern with the lower court's interpretation of the ICWA. It cautioned against applying the ICWA in a way that would leave Indian children adrift in the system simply because of their race, which would create an equal protection problem. Lastly, but significantly, the majority seemed to view congressional intent in a way that does not take into account the rights of tribes.

The dissent's opinion and representation of the issues was in alignment with the way that *Indian Country Today* and *Cherokee Phoenix* reported the case. The opinion

found that the South Carolina court correctly applied the ICWA and that the application was consistent with the congressional intent in enacting the ICWA. As indicated above, Sotomayor's dissent was the only opinion that considered Tribal rights as contemplated in the ICWA's congressional intent.

The findings of this case came as a surprise to those who believed that the Congressional intent of the ICWA was clear and consistently applied in the lower court. Tribal advocates, child welfare workers, including those specializing in the ICWA, and Federal Indian law lawyers alike hoped that the Supreme Court decision would further mandated compliance with the ICWA, thereby strengthening the congressional intent. Instead, the Supreme Court's decision limited the rights of a subset of biological parents, and relegated the preferential placement guidelines to adoption cases involving more than one party attempting to adopt an Indian child. The case further marks a serious departure from the 1989 Supreme Court's opinion that emphasized the need to consider tribes when deciding cases involving the Indian Child Welfare Act.

Discussion

The United States Supreme Court was created on the idea of Separation of Powers. With the executive and legislative branch being influenced greatly by public opinion, it is imperative that the judicial branch remain impervious to political pressure. This is the reasoning behind the life-time appointments of U.S. Supreme Court Justices. Justices derive their power from the constitution and work to ensure that the constitution is continuously being upheld. However, as contributors to society individual Justices and the Supreme Court as a whole are at times influenced by public opinion.

Every year, over 7,000 petitions for a writ of certiorari are submitted to the Supreme Court. Out of those, the Court only grants about 80 of those cases.⁵¹ As a practical matter the Court is constrained by time as well as likelihood of policy application. Public opinion greatly influences not only the cases chosen to be heard by the Court but also the policy decisions behind the opinions.⁵² As this study indicates the ‘Baby Veronica’ case was no exception.

First, the national attention that the ‘Baby Veronica’ case gained throughout mainstream media influenced the Supreme Court to grant a hearing of a case regarding the ICWA, an area of law that the Court has not taken up in over twenty years. The majority opinion in the case conforms to the same themes that were perpetuated in mainstream media. Conforming to public opinion helps ensure the Supreme Court that their policy decisions will be applied⁵³, i.e. that noncustodial fathers will not be considered a ‘parent’ under § 1912(f) of the ICWA.

When it comes to Federal Indian Law the implications of public opinion of Supreme Court decisions are multifold. a) In general Supreme Court decisions are greatly influenced by public opinion, b) Justices are individuals who live in a society where the rights and issues of Native Americans has been systematically repressed, and c) in making decisions today the Supreme Court is bound by precedent that is littered with racial and stereotypical policies regarding the treatment of Tribes.

It is clear from the study that mainstream media represents Native American issues in a way that is biased and conforms to the historical racialization of Native Americans. Furthermore, when Native American issues are raised there tends to be a lack of context for the reader, and public, to truly understand the issues implicated. As of right now the conversation regarding Native American issues is being directed by those with little to no understanding and is rarely composed of a Native American narrative. As Native American writers and Native American newspapers gain a foothold in mainstream media the conversation of Native American issues will shift to one directed and written by the people it effects most; Native Americans.

Implications Moving Forward

The implication that the ICWA is a race-based law that serves as a roadblock for the adoption of Indian children remains a consistent theme in mainstream media. A case originating in California has recently gained national news and involves a 6-year-old Choctaw girl who was placed in the care of non-Indian foster parents while rehabilitation efforts were being taken, in accordance with the ICWA.⁵⁴ The facts surrounding the case are different, but the misconceptions surrounding the Indian Child

Welfare Act are the same. Clearly there is a need to educate the public of the benefits and intent behind the ICWA.

There is nothing inherently wrong with a law that attempts to keep families intact, in fact the procedures in place under ICWA could be applied beneficially in all child custody proceedings. Whether this is applicable in a society who places greater emphasis on the right to adopt than on the parental right to raise a biological child remains to be seen. As this study finds, the general public is concerned that ICWA is raced based and has little to no knowledge regarding Tribal sovereignty and a Tribe's distinction as a distinct political entity.

The majority relied on BIA guidelines to bolster the finding that the procedures in place under the ICWA for termination of parental rights do not apply to a father who never had custody of the child because termination of his rights would not be considered a breakup of of an Indian Family. This line of reasoning has been referred to as the 'Indian Family Doctrine' and was first developed in 1982 by the Kansas state Supreme Court.⁵⁵ The case that gave birth to this doctrine involved a non-Indian mother and an Indian father who was incarcerated during his attempt to prevent the mother from placing the child up for adoption.⁵⁶ One of the characteristics of applying this doctrine is the attempt to define a Native American family based on concrete cultural and social ties to the tribe as well as physical proximity to tribal reservations. The judicial tendency to apply the 'Indian Family Doctrine' mirrors mainstream media's portrayal of Dusten Brown as having little to no cultural ties to the Cherokee Nation.

Since the 'Baby Veronica' case the BIA has issued new guidelines in an attempt to clarify the issues surrounding the inconsistent application of the ICWA in state

courts. While not binding, the regulations can be referred to a guidance as Justice Alito did in the majority opinion.

[t]he following non-exhaustive list of factors should **not** be considered in determining whether ICWA is applicable: *the extent to which the parent or Indian child participates in or observes tribal customs, votes in tribal elections or otherwise participates in tribal community affairs, contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians, participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe; the relationship between the Indian child and his/her Indian parents; the extent of current ties either parent has to the tribe; whether the Indian parent ever had custody of the child; and the level of involvement of the tribe in the State court proceedings.*⁵⁷

This section of the guidelines confirms that mainstream media's representation of Dusten Brown as a non-custodial Indian parent with few cultural ties to the Cherokee Nation is irrelevant in deciding whether ICWA applies. This is ultimately due to Tribal sovereignty and is an attempt to not infringe upon tribes' right to self-determination.

The new regulations defining parent speaks directly to the facts surrounding the 'Baby Veronica case'. The guidelines redefine 'parent' as follows;

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed father where paternity has not been acknowledged or established. To qualify as a parent, an unwed father need only take reasonable steps to establish or acknowledge paternity. Such steps may include acknowledging paternity in the action at issue or establishing paternity through DNA testing.⁵⁸

Under this definition of 'parent' the ICWA would apply to Dusten Brown, whose paternity was never questioned. The new regulations "make clear that there is no

existing Indian family (EIF) exceptions to application of ICWA”, correctly characterizing it as a judicially created fallacy.⁵⁹

Lastly the majority opinion systematically overlooked the interests of the Cherokee Nation by not allowing THE CHEROKEE NATION time for oral arguments and for not considering the implications their ruling would have on Tribes. However, the new guidelines clarify that the Congressional intent of the ICWA “includes the impact of large numbers of Indian children adopted by non-Indians on the tribes themselves.”⁶⁰ Taken as a whole the new guidelines, if applied to similar cases in the future, would prevent the same outcome as the ‘Baby Veronica’ case.

It is telling that the Bureau of Indian Affairs released new guidelines that directly conflict with the Supreme Court’s decision in *Adoptive Couple v. Baby Girl*. Hopefully these measures serve to counteract some of the influences that public opinion has on court decisions. If only for the reason that it suggests that policies to the contrary would be in direct conflict with the policies of the Bureau of Indian affairs. Whether these new guidelines will have an effect and the application of the ICWA remains to be seen.

Bridging the Gap of Knowledge

Given the general lack of knowledge in regards to Native American issues it is important for tribal advocates and tribes to help educate the public. Building relationships with mainstream media reporters is important to help bridge the gap of knowledge. Newspaper reporters have a limited time window in which to gather information on a given topic and compose an article. Reporters will often consult a source that they can trust during this process. Therefore, it is beneficial for reporters to

have sources knowledgeable in Federal Indian Law and Native American issues. In exchange tribal advocates and tribes gain insight into how Native American issues are being represented and are given the opportunity to participate in the conversation.

The spread of knowledge is ultimately composed of open and honest conversations. There are ample opportunities to have conversations about Native American issues including, holding symposiums that are open to the press and public, reaching out to reporters, holding educational seminars. In regards to the ICWA, relationships with child welfare workers and judges is important in order to help ensure that the ICWA is applied. This includes getting the Tribes involved and opening up a dialogue between Tribes and state judges so that a mutual understanding of how the ICWA should be applied can develop. This will help present a uniform application of the ICWA and streamline the process so that the timeliness of these procedures do not become a burden on state court dockets or the children.

Conclusion

Native Americans have been systematically underrepresented in the United States. Historically, when Native Americans are being represented it is done in stereotypical fashion. These stereotypes include, but are not limited to, the savage Indian, the noble Indian, the vanishing Indian, and the Indian as a mascot. Racial stereotypes are often influenced by a political agenda and serve to diminish perception of Native Americans and belittle tribal sovereignty. Today media, such as television, radio, and newspapers, plays a tremendous role in shaping public perception.

Studies of the media representation of ethnic minorities indicate that not only are ethnic minorities underrepresented but also negative representations can influence a correlating negative perception. The implication such findings has on Native Americans is two-fold. First underrepresentation of Native Americans plays into the stereotype of the vanishing Indian and regulates Native American issues to the past. Second, confusing or negative representation of Native Americans can have a negative impact on public perception and since Federal Indian law is in many ways still a developing area of law, public perception can play a negative role in shaping policy.

The Supreme Court case of *Adoptive Couple v. Baby Girl* case ('Baby Veronica' Case) had significant implications for Federal Indian Law and the application of the Indian Child Welfare Act. The case itself received tremendous media attention, as such it provided the ideal subject for a study that seeks to document the media's representation of Native Americans. The research suggests that mainstream media represented the case in a biased and one-sided fashion. The five reoccurring themes included: 1) The ICWA as a race based law; 2) Dusten Brown' termination of his

parental rights; 3) The adoptive Couple's rights; 4) Best Interest of the Child; and 5) Congressional intent of the ICWA.

Many of these themes combined to form the majority's opinion lending credence to the idea that the judicial branch is greatly influenced by media. This is compounded by the fact that Native American issues are widely misunderstood due in part to the governments historical attempts to discredit Tribal Sovereignty as well as media's underrepresentation of Native American's in general. The Indian Child Welfare Act and the application thereof is ultimately an acknowledgement of Tribal sovereignty. As such ICWA should be presented to the public from a Tribal context and given the same reverence due to any other government to government relationship.

The influence of mainstream media on the public extends to lawyers, judges, and child welfare workers. As such, tribes and tribal advocates can benefit from the assessment of Native American representation in mainstream media. Such knowledge allows tribes to determine the most effective way to approach issues. For example, recognizing that tribal sovereignty was downplayed in the representation of this case indicates that advocacy, and an overall education, of tribal sovereignty is necessary going forward. These basic understandings are necessary in order for conversations regarding Native American issues can be productive. Assessing media representation can be a useful tool for tribes and tribal advocates.

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