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THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: MISSISSIPPI BAND OF CHOCTAW INDIANS, Appellant
V. ORREY CURTISS HOLYFIELD, ET UX., J.B.,
NATURAL MOTHER AND W.J., NATURAL FATHER

CASE NO: 87-980

PLACE: WASHINGTON, D.C.

DATE: January 11, 1989

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IN THE SUPREME COURT OF THE UNITED STATES

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MISSISSIPPI BAND OF CHOCTAW :

INDIANS, :

Appellant :

v. :

No. 87-980

ORREY CURTISS HOLYFIELD, ET UX., :

J.B., NATURAL MOTHER AND W.J., :

NATURAL FATHER :

-----x

Washington, D.C.

Wednesday, January 11, 1989

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:52 o'clock a.m.

APPEARANCES:

EDWIN R. SMITH, ESQ., Philadelphia, Mississippi; on behalf of the Appellant.

EDWARD D. MILLER, ESQ., Gulfport, Mississippi; on behalf of the Appellees.

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P R O C E E D I N G S

(10:52 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argurent next
in No. 87-980, the Mississippi Band of Choctaw Indians
v. Orrey Curtiss Holyfield, et ux.

Mr. Smith, you may proceed whenever you're ready.

ORAL ARGUMENT OF EDWIN R. SMITH

ON BEHALF OF THE APPELLANT

MR. SMITH: Mr. Chief Justice, and may it please
the Court:

Only ten years have passed since this Court's
ruling in United States v. John, where the Mississippi
courts were attempting to apply state laws to Indians
within the territorial jurisdiction of the -- of the
Choctaw Indian reservation. At stake in that case was
not simply the Indian country status of the reservation
lands, but ultimately the legal existence of the
Mississippi Band of Choctaw Indians as a tribal
government.

Despite this Court's unanimous ruling in John
vindicating the tribe's rights to a separate
jurisdiction, now a decade later, Mississippi courts are
once again seeking to apply state laws to Choctaw
Indians of the Choctaw reservation. At stake this time
is potentially not simply the future existence of the

1 Appellant, Mississippi Band of Choctaw Indians, but the
2 future existence of Indian tribes nationwide as
3 identifiable cultural entities.

4 The issues before this Court arose within the
5 context of the state adoption proceeding, a non-Indian
6 white couple from down on the coast petitioned a state
7 court to adopt twin full-blooded Choctaw Indian babies
8 immediately following their birth at an off-reservation
9 hospital. Both the natural mother and the putative
10 father in this case were and still are resident and
11 domiciled on the Choctaw Indian reservation. Quite
12 simply, the mother left for the short period of
13 approximately ten days for the purpose of giving birth,
14 signing over the children for adoption and returning to
15 the reservation.

16 QUESTION: Mr. Smith, I'm troubled a little bit by
17 what might be a standing problem here. The only
18 petitioner is the Choctaw Band, isn't it?

19 MR. SMITH: Yes, Your Honor.

20 QUESTION: Well, supposing this were a case that
21 didn't involve Indian tribes, but involved people in
22 California, say, getting a divorce from one another and
23 the State of Nevada felt very strongly, since they had
24 been both domiciled in Nevada, that Nevada courts should
25 have had jurisdiction rather than the California courts,

1 do you think the State of Nevada by itself could come
2 before us and say, well, the California courts had no
3 jurisdiction here, they should have done it in Nevada?

4 MR. SMITH: No, sir, Chief Justice Rehnquist. But
5 there is a crucial distinction here in that the standing
6 of the Mississippi Band of Choctaw Indians has been
7 vested by statute, and --

8 QUESTION: Well, does the statute say in so many
9 words that the Mississippi Band shall have a standing to
10 raise this sort of a question?

11 MR. SMITH: The -- the statute provides a vested
12 interest in the tribe in the placement of its Indian
13 children, and that is precisely what's at stake here.
14 We're alleging that the children were wrongfully taken
15 from the tribe, and therefore they -- they have suffered
16 a wrong. They have suffered an injury.

17 QUESTION: Well, I suppose you could say the Tenth
18 Amendment gives the State of Nevada a vested interest,
19 too. I mean, does the tribe have any more interest in
20 the ability to apply its laws by virtue of this statute
21 than the states do by virtue of -- of our constitutional
22 structure?

23 MR. SMITH: Yes, sir, Your Honor, I believe they
24 do. The distinction would be that the -- the Tenth
25 Amendment provides that all powers not vested are

1 reserved to the states. Now, in this particular case
2 the powers were specifically -- or the power to regulate
3 Indian affairs was vested by the Constitution in
4 Congress. And Congress, in turn, has by statute
5 conferred a protected interest in the tribe in the
6 future of its children. As the statute says that they
7 are of paramount importance to the future of the tribe
8 itself.

9 QUESTION: Mr. Smith, I guess the statute in
10 section 1911 says the Indian child's tribe shall have a
11 right to intervene at any point in the proceeding, in a
12 state court proceeding, involving termination of
13 parental rights. Is that right?

14 MR. SMITH: Yes, Your Honor.

15 QUESTION: And the tribe did intervene pursuant to
16 that statute?

17 MR. SMITH: The tribe filed a motion to dismiss,
18 alleging that the state court lacked jurisdiction over
19 this proceeding. It is our contention --

20 QUESTION: Is that tantamount to an intervention in
21 the proceeding?

22 MR. SMITH: Yes, I would say it was tantamount to --

23 QUESTION: And what was the timing of that motion
24 by the tribe?

25 MR. SMITH: The motion was filed as soon as the

1 tribe learned that the adoption had gone on through, I
2 think it's --

3 QUESTION: Was that after the adoption had become
4 final?

5 MR. SMITH: That was after the adoption became
6 final, but important to this case I think to understand
7 is that even before the children were born, the tribe
8 had become aware that the adoption was going to take
9 place and had notified the proposed adopting couple, as
10 well as their counsel, that there was this federal law
11 that did govern, and that the -- the natural mother was
12 resident, domiciled on the reservation, and that
13 therefore 1911(a) would vest exclusive jurisdiction in
14 the tribal court.

15 QUESTION: Well, how long after the adoption decree
16 was issued by the trial court did the tribe intervene?

17 MR. SMITH: I am not certain, but I believe it was
18 something like three or four weeks. We had -- we -- the
19 opposing -- or the counsel handling --

20 QUESTION: Wasn't it between January 28 and March
21 31 or the two months?

22 MR. SMITH: Yes.

23 QUESTION: Yes.

24 MR. SMITH: We had been making repeated attempts to
25 try and notify opposing counsel and tried to keep

1 abreast of what was going on and were not able to learn
2 until after the adoption was in place. We received a
3 copy of the decree.

4 QUESTION: Do you think that this Court has
5 appellate jurisdiction of this claim of the tribe?

6 MR. SMITH: Yes, Your Honor, I do. I believe that
7 in many respects this case is a carbon copy of the John
8 v. Mississippi portion of the U.S. v. John case.

9 QUESTION: I thought the court below just didn't
10 deal with the constitutionality of the statute at all.

11 MR. SMITH: I -- I think that it's a matter of
12 interpretation and that there is a lot of guesswork that
13 has to take place on this case as to precisely what the
14 court did and did not do in here.

15 Under one theory they are, in effect, enacting, or
16 they are legislating, the residence and domicile under a
17 new set of rules that they -- they adopted for this
18 specific case. And in doing so, they are imputing these
19 rules of residency and domicile to the Choctaw
20 reservation as well to say that they are not residents
21 and domiciliaries of the reservation. To the extent
22 that they try and do this --

23 QUESTION: Well, I thought the state court was just
24 applying its own state law to determine the domicile of
25 the child. Isn't that what happened, and isn't that a

1 fair reading of what the court below did?

2 MR. SMITH: I believe, Your Honor, that both
3 readings are consistent, that under -- on the one hand,
4 they could have been saying that the rules of residence
5 and domicile are that they have to, one, be physically
6 present within the Jurisdiction and, two, that it has to
7 be consistent with the -- the expressed intent of the
8 natural mother. And then they are taking these -- these
9 two newly fashioned rules, these departures from the
10 previous rule that the State of Mississippi had on
11 residence and domicile, and they are applying them onto
12 the reservation to say quite simply this mother was not
13 a resident and domiciliary.

14 QUESTION: Well, I thought it was a fair reading of
15 the court opinion that we're being asked to review here,
16 that it was applying a matter -- as a matter of state
17 law in Mississippi a determination that this child was
18 domiciled in Mississippi.

19 MR. SMITH: But it is --

20 QUESTION: And so, I have difficulty knowing how we
21 have appellate Jurisdiction. Now, perhaps we could
22 grant certiorari, but it's very difficult for me to
23 understand how we have appellate Jurisdiction here.

24 QUESTION: For what's it worth, I share Justice
25 O'Connor's concern.

1 MR. SMITH: Yes, sir.

2 Because it is necessary in this case to make a
3 determination that these children -- or that the natural
4 mother -- or note that these children were not residents
5 at law and domiciliaries at law of the Choctaw
6 reservation. And the only way that this could have
7 possibly taken place was to apply these newly fashioned
8 standards onto the reservation to, in effect, expatriate
9 these children, because otherwise 1911(a), I believe is
10 quite obvious, would apply and would make it clear that
11 the state court did not have jurisdiction, which is our
12 contention here.

13 As to the matter of the certiorari jurisdiction, I
14 believe that opposing counsel has failed --

15 QUESTION: Well, 1911(a) just says that an Indian
16 tribe shall have exclusive jurisdiction over a child
17 custody proceeding involving a child who resides or is
18 domiciled within the reservation.

19 MR. SMITH: That's correct, Your Honor.

20 QUESTION: Now you have a child that was born off
21 the reservation, and a state court saying as a matter of
22 state law, it isn't domiciled on the reservation.
23 That's what we have, isn't it?

24 MR. SMITH: That's -- that's true, Your Honor.

25 QUESTION: Yes.

1 MR. SMITH: But I believe that to the -- I think
2 that there are two crucial things here. One of them is
3 that that was not the state law up until this particular
4 case. In 1975 the Mississippi Supreme Court said that
5 it was unquestioned that the residence of -- of a minor
6 was that of its parent or guardian -- of its natural
7 parent. And this was in the In re Watson case. So,
8 first of all, this was a newly fashioned rule, which I
9 think is --

10 QUESTION: Well, generally speaking we accept the
11 determination of state laws that's determined by the
12 state's highest court. You just want us to say that
13 that's preempted by federal law. I mean, I think it's
14 very difficult for us to say that isn't the state law of
15 Mississippi.

16 MR. SMITH: We have -- we have no dispute with
17 Mississippi's right to create such a law, but we do have
18 a dispute with their right to be able to apply that in a
19 manner such as here to divest the tribe of its rights to
20 adjudicate over these minor children.

21 As far as the certiorari jurisdiction of the Court
22 goes, I would note that the Appellant in his reply brief
23 raised no objection to the certiorari jurisdiction. So,
24 Justice Blackmun, I would -- I too am in agreement that
25 the certiorari jurisdiction of this Court would lie in

1 this case.

2 QUESTION: In your view of -- of the federal law,
3 you apparently take the position that an Indian parent
4 who would like to place an -- an -- that parent's
5 illegitimate child with a non-Indian family would have
6 to permanently leave the reservation to do it and
7 establish domicile outside the reservation. Is that
8 right?

9 MR. SMITH: That's correct.

10 QUESTION: Do you think that's what Congress
11 intended?

12 MR. SMITH: Yes, I -- I believe that Congress
13 intended through this legislation to make it less easy
14 for the state courts to be able to come in and to remove
15 these children from their -- from their homes. I think
16 that the legislative history makes it clear that there
17 is a very major problem within Indian tribes.

18 QUESTION: what if -- what if both parents want
19 their child to be adopted through the state system?

20 MR. SMITH: Then I would maintain that both parents
21 would have to go into that state and legitimately
22 establish residence and domicile. And once they have
23 done that, then they could avail themselves of the state
24 court's jurisdiction in a basis like this.

25 QUESTION: well, how -- supposing these people

1 decided to move from the reservation -- was the baby
2 born in Gulfport?

3 MR. SMITH: Yes, Your Honor.

4 QUESTION: How long would they have had to live in
5 Gulfport in order to be able to have the child adopted
6 through state proceedings?

7 MR. SMITH: The state statutes do not establish any
8 specific time period.

9 QUESTION: Well, but I thought -- I thought you're
10 suggesting there's some federal rule because of the
11 Indian Child Welfare Act but -- that -- their intention
12 is apparently not relevant in your view because they
13 obviously wanted the child adopted in the state
14 proceeding. You say federal law prohibits them from
15 doing it unless they've independently established some
16 domicile.

17 Now, is -- does the federal principle that you
18 deduce from the statute require some period of residence
19 in Gulfport?

20 MR. SMITH: No, the federal statute doesn't. I
21 believe it would be appropriate for the state to make
22 that determination once they had legitimately gone off
23 reservation with the specific intent to establish --

24 QUESTION: Well, these people legitimately -- I
25 mean, unless they need some sort of a permit to get off

1 the reservation, they went into Gulfport to have the
2 baby born. The -- Gulfport isn't on the reservation.

3 MR. SMITH: That's correct, but as a practical
4 matter --

5 QUESTION: Why doesn't this meet -- why -- why
6 doesn't their act here meet your test?

7 MR. SMITH: Because they never left, they never
8 abandoned their residence and domicile on the
9 reservation. They are still residents and domiciliaries
10 -- the natural parents are -- of the reservation. Under
11 normal common law, the residence of a minor child is
12 that of its natural parent or parents.

13 QUESTION: Now, the Mississippi court disagreed
14 with you here at least as to Mississippi law.

15 MR. SMITH: The Mississippi court disagreed and
16 made the departure on this one specific case. Prior to
17 this in all other cases, the Mississippi court has
18 followed that rule.

19 QUESTION: But you --

20 MR. SMITH: And virtually all states in the Union
21 do follow that rule.

22 QUESTION: You -- you say that the -- the parents
23 here would have had -- if they have a house on the
24 reservation, they would have had to sell the house and
25 rent a place in Gulfport and establish a home there

1 before they could be -- have their child adopted in the
2 state proceedings.

3 MR. SMITH: Yes, Your Honor.

4 QUESTION: Mr. Smith?

5 MR. SMITH: And I don't think that's unreasonable.
6 If you live in a jurisdiction, you're subject to their
7 laws. And the pattern of laws in this country is such
8 that they do impute certain legal statuses to certain
9 situations. In the case of a minor, the pattern of law
10 throughout has invariably been that a minor acquires the
11 residence and domicile of its natural parent. I don't
12 frankly see what the problem is with allowing that to be
13 a federal rule of residence and domicile for purposes of
14 this Act. As far as --

15 QUESTION: This would be a problem I suppose.
16 You're making -- making a jurisdictional argument
17 basically that that court had no jurisdiction. And I
18 know the tribe acted very promptly here.

19 But supposing the children were 15 years old, they
20 could still come in and challenge the adoption under
21 your theory. There's no waiver of a jurisdictional
22 claim like this. I mean, that -- that's a tough rule if
23 you have to apply it that far.

24 MR. SMITH: Yes, Justice Stevens.

25 QUESTION: And I think that's where your theory

1 takes you.

2 MR. SMITH: I think that that -- that is an extreme
3 extension of it, yes.

4 QUESTION: But -- say the tribe didn't find out
5 about this until -- the child apparently was not born to
6 married parents. It was an unusual situation. Say the
7 tribe found out about it after the child was three or
8 four years old. They could still have -- the tribe
9 would have exactly the same interest.

10 MR. SMITH: I believe --

11 QUESTION: And you think Congress probably intended
12 that, well, that's just one of those tough situations.

13 MR. SMITH: Yes, that -- that is one of those tough
14 situations. But I believe too that in the majority of
15 cases there would be some other types of supervening
16 factors that would come into play. I think, for
17 example, that there could well be a matter of
18 abandonment that would -- would come in and would --
19 would --

20 QUESTION: But no, it's not what the tribe
21 abandons, but your position is the court -- the
22 Mississippi court simply had no power to act. So, that
23 -- that decree is basically a nullity because the
24 federal statute says the exclusive jurisdiction right
25 resides with the tribe.

1 MR. SMITH: Yes.

2 QUESTION: Does the Indian tribal court have the
3 authority to grant adoptive status to the present
4 parents?

5 MR. SMITH: To the --

6 QUESTION: To the present adoptive parents.

7 MR. SMITH: To Mrs. Holyfield?

8 QUESTION: Yes.

9 MR. SMITH: Yes, it does.

10 QUESTION: Based on the best interests of the child?

11 MR. SMITH: Yes, that's true. And --

12 QUESTION: So, if the Indian --

13 MR. SMITH: -- (inaudible) were to --

14 QUESTION: So -- so, it's open to the present
15 adoptive parents to argue that it's in the best interest
16 of the child because of the bonding that has taken place
17 over the last few years, that they should be given
18 custody of the child?

19 MR. SMITH: Yes, Your Honor. And that certainly
20 would be a factor that would come into play. I feel --
21 I feel that the tribal court, in the event this case
22 were to be --

23 QUESTION: Let's go back earlier and suppose that
24 the tribal court had had jurisdiction at the outset, and
25 the -- and the mother and the -- and the putative father

1 both expressed their desire that this child be adopted
2 by these same people who are not Indians and off the
3 reservation. Could the tribal court say we will not
4 allow that adoption simply because these people are not
5 Indians and the child will not be brought up off the
6 reservation -- will not be brought up on the reservation?

7 MR. SMITH: The --

8 QUESTION: Even those the mother wants the child --
9 the mother says I've lived on the reservation. I know
10 what's it like. I don't want my child to -- to be
11 brought up on the reservation. I would like him to be
12 adopted by people off the reservation. Can the tribal
13 court overrule that?

14 MR. SMITH: The tribal court I believe would follow
15 the preference placement standards of the Indian Child
16 Welfare Act, and if they were able to pass through the
17 various tiers down in their examination -- or in the
18 compiling of the evidentiary record, if they could pass
19 down through the various levels of preference to that
20 situation successfully, yes, they could.

21 QUESTION: But if -- if you could find Indians on
22 the reservation who were willing to adopt the child,
23 they would have to say that they must adopt the child,
24 despite the wishes of the child's parents?

25 QUESTION: Well, doesn't the statute require that?

1 The statute says that preference must be given to a
2 member of the Indian child's extended family or a -- an
3 Indian foster home or institution in preference to a
4 private placement off the reservation with non-Indians?
5 Isn't that what the statute says?

6 MR. SMITH: Yes, that's in essence what the statute
7 says, but --

8 QUESTION: So, there's just no way, as a practical
9 matter, that the child would be placed off the
10 reservation with non-Indian parents?

11 MR. SMITH: I disagree because I believe that the
12 court could work its way through in an appropriate
13 situation. Now, if this were an arbitrary placement
14 with a non-Indian family where, for instance, the facts
15 were very bad or the -- the suitability of the
16 non-Indian family was very weak, no, I don't believe
17 that the tribal court would ever approach that. But on
18 the other hand, --

19 QUESTION: (Inaudible).

20 MR. SMITH: -- if the -- the

21 QUESTION: I don't think it's appropriate to
22 predict what they might do. The only question is the
23 tribal court clearly would have the power to say we do
24 not -- we are not going to permit this child to be
25 placed in a non-Indian family. It clearly would have

1 that power. It might decide not to do it, but it's
2 clear that the -- the mere fact that the natural parents
3 want the child adopted by a non-Indian couple in
4 Gulfport doesn't mean that they will have their wishes
5 prevail in the tribal court.

6 MR. SMITH: That's true.

7 QUESTION: Mr. Smith, as a matter of curiosity, how
8 large is the Choctaw Band in Mississippi now, and are
9 they all clustered around Philadelphia?

10 MR. SMITH: The Choctaw reservation has grown
11 somewhat since the John decision, Justice Blackmun. It
12 is now around 23,000 acres, and I believe it was around
13 20,000 at the time of the John decision. But they --
14 they are now --

15 QUESTION: But how many people? You said acres.

16 MR. SMITH: Yes. How many people? According to a
17 1981 enumeration of the Choctaw population, there were
18 4,361. In 1986 there were 4,478, but there is a
19 possibility of an under-count of approximately 150 on
20 the latter number. Of this, one-seventh of the tribe
21 lives off reservation. The other six-sevenths live on
22 reservation. And they are in the -- in seven
23 predominant communities that --

24 QUESTION: Say that again. The other six-sevenths
25 is where?

1 MR. SMITH: Is on reservation.

2 QUESTION: On the reservation?

3 MR. SMITH: Yes. One-seventh off reservation.

4 QUESTION: Are there more in Oklahoma than there
5 are in -- in Mississippi?

6 MR. SMITH: I don't really know the answer to that,
7 Justice Blackmun. I think the one thing that might come
8 into play here is that with the Mississippi Band of
9 Choctaw Indians membership, blood quantum requirements
10 are one-half or more degree; and if I'm not mistaken, in
11 Oklahoma it's considerably less, but it's either
12 one-fourth or lower than that. And --

13 QUESTION: The statutory standard is not the best
14 interest of the child?

15 MR. SMITH: Yes. The statutory standard is the
16 best interest of the tribe -- of the child.

17 QUESTION: Where does it say that? I don't find it
18 in the statute, and I'd be interested to know where you
19 find it in the statute.

20 QUESTION: I -- I was looking at 915 and did not
21 see it there.

22 MR. SMITH: Section 1902, Congress hereby declares
23 as the policy of this nation to protect the best
24 interests of Indian children.

25 QUESTION: Well, it was Congress' policy in

1 adopting the Act. Where does it say that the best
2 interests of the child is the standard to be used by a
3 court or the tribe in placing the child?

4 MR. SMITH: I read it and I infer it through 1902.

5 QUESTION: Well, it goes on -- 1902 goes on and
6 says the Congress hereby declares that it is the policy
7 of this nation to protect the best interests of Indian
8 children and to promote the stability and security of
9 Indian tribes and families by establish a minimum
10 federal standards for the removal of Indian children. I
11 would think a court looking at that would feel there are
12 several policies there, not just the best interests of
13 Indian children.

14 MR. SMITH: That's true.

15 QUESTION: (Inaudible) I would think to give
16 Congress' judgment about what the best interests of the
17 Indian child is.

18 MR. SMITH: Yes, it does.

19 QUESTION: Yes. Well, I don't think courts have
20 any -- have any independent, open-ended authority to, to
21 decide what the best interests of the child is, contrary
22 to what Congress says they are.

23 MR. SMITH: I believe that all of these interests
24 can be read as being compatible with the best interests
25 of the child.

1 And I think that that is one of the problems that
2 Congress is trying to address in this legislation is the
3 fact that the social studies have -- have proven that
4 the children who are removed from their Indian homes and
5 Indian environments and Indian culture invariably, as
6 they reach the teenage years, the overwhelm -- a
7 disproportionately large number of these children suffer
8 extreme identity problems. The rate of suicide among
9 these Indian children is double what it is children at
10 the reservation. And the incidence of violence and drug
11 abuse and so forth are likewise far in excess with the
12 -- with the children who are placed in non-Indian homes
13 as compared with those who are born and reared -- are
14 reared on the reservation in an Indian environment.

15 So, I believe that Congress and the legislative
16 history of the legislation shows that there was a
17 thorough inquiry made into this area and that this was a
18 reasoned decision on the part of Congress for the
19 protection of these various interests involved here.

20 QUESTION: But there is some indication in the
21 legislative history that Congress intended to leave to
22 state law the question of determination of domicile.

23 MR. SMITH: I --

24 QUESTION: Because it clearly contemplated some
25 proceedings in state courts. It does that expressly in

1 the statute. And there's some indication in the
2 legislative history that Congress was leaving the
3 question of domicile to be determined by state law.
4 Isn't that so?

5 MR. SMITH: I don't believe so, Justice O'Connor.
6 I -- I believe that you get that indication --

7 QUESTION: It certainly didn't define domicile.

8 MR. SMITH: Pardon?

9 QUESTION: It did not choose to define domicile in
10 the statute.

11 MR. SMITH: It did not expressly define -- define
12 domicile in the final draft of the statute, but in the --

13 QUESTION: And the cases cited in the --

14 MR. SMITH: -- Initial draft --

15 QUESTION: And the cases cited in the House report
16 certainly indicated some satisfaction with the operation
17 of state law on that question.

18 MR. SMITH: It expressed the satisfaction with the
19 operation of the state laws that applied that accepted
20 the notion that a minor child acquires the residence and
21 domicile of its natural parent. And I believe that
22 that's why they were citing the Wakefield v. Littlelight
23 decision and the Greybull case and the Potowatamy case.

24 As far as the legislative history on this goes, the
25 initial draft of the Indian Child Welfare Act with the

1 section which is comparable now to 101(a) of the Act or
2 1911 stated -- and I'll quote -- "For purposes of this
3 Act, an Indian child shall be deemed to be a resident of
4 the reservation where his parent or parents is
5 resident." And that's in 124 Cong. Rec., Part 19, at
6 Page 37, 224 of November 4, 1977.

7 So, at least in the very initial draft of this
8 statute, it was very clearly intended by Congress that a
9 minor child would acquire at law the residence and
10 domicile of its Indian parent. And there is nothing in
11 the legislative history elsewhere that ever indicates a
12 conscious decision to depart from this rule.

13 In addition, the legislative history said that it
14 can -- In reference to the Wisconsin Potowatomies case
15 and the Wakefield and the Greybull decision, stated that
16 they can form the developing federal and state case law
17 holding that the tribe has exclusive jurisdiction when
18 the child is residing or domiciled on the reservation.
19 And again, all of these cases entailed the application
20 of the rule that a minor would acquire the residence and
21 domicile at law of its natural parent.

22 And in some of these cases, the children were off
23 the reservation and the parents were on reservation, and
24 the court in those decisions did affix the
25 on-reservation residence and domicile to the natural

1 child and did so -- and in the process of doing so, they
2 divested the state of its jurisdiction.

3 So, we're not coming in here with a unique or a
4 novel rule of law. We're simply saying that this is an
5 old standard. This is a practice standard in all other
6 states. This has been the practice standard in the
7 State of Mississippi up until this specific case, and I
8 submit that the decision of the Mississippi court was an
9 attempt to divest the tribe of jurisdiction expressly
10 conferred by Section 1911(a) of the Indian Child Welfare
11 Act. It was also an attempt to imply -- to apply their
12 standard of law to the reservation and to Indians of the
13 reservation.

14 And I believe and I maintain that this is simply in
15 so many -- all too many respects a rehash of the John
16 decision. Mississippi courts are once again trying to
17 divest the tribes of their lawful jurisdiction over
18 their citizens of their reservation. And I submit that
19 this is precluded by the Indian Child Welfare Act, and I
20 believe that this Court has also indicated that it was
21 precluded by the Fisher v. District Court decision.

22 I might note that in the Fisher v. District Court
23 decision, this Court noted such things as the birth of a
24 child off reservation were minimal and that therefore
25 they would be disregarded in determining that the -- the

1 reservation did have exclusive jurisdiction. And I
2 submit that the -- the simple act -- the Mississippi
3 court makes such a big point of these children having --
4 or of this mother having gone to what they call great
5 lengths to give birth to these children off reservation,
6 when the reality is that all children of the Choctaw
7 reservation and approximately 90 percent of the Indian
8 children of this nation are born off of reservation.

9 QUESTION: How far is it from Philadelphia to
10 Gulfport?

11 MR. SMITH: Less than 200 miles, I believe.

12 QUESTION: I take it they could have picked a
13 hospital at which to give birth closer to Philadelphia
14 than Gulfport.

15 MR. SMITH: Yes, about 50 to 70 miles is the norm.

16 QUESTION: Thank you, Mr. Smith.

17 We'll hear now from you, Mr. Miller.

18 ORAL ARGUMENT OF EDWARD O. MILLER

19 ON BEHALF OF THE APPELLEES

20 MR. MILLER: Mr. Chief Justice, and may it please
21 the Court:

22 I'm Edward Miller, counsel for Appellees. The
23 Appellees are four parties: the adoptive parents, the
24 Holyfields, and also the natural Indian parents, both
25 the father and the mother.

1 If I have lapses here, I apologize. My father was
2 buried Monday, and he died Friday night during a
3 conversation with me. So, I've had -- It's been a real
4 struggle for me to keep my mind on the right track.
5 Hopefully, I can do that today.

6 I would first like to say that the reason for the
7 ICWA, the Indian Child Welfare Act, was a good one. It
8 was designed, as the preamble states, to prevent the
9 breakup of Indian families. And it was designed also to
10 prevent the involuntary taking of Indian children by
11 non-Indian parents.

12 And the statute recognizes this, and Congress
13 recognized this and -- by establishing two proceedings
14 under the Act. Under Section 1911, which surely will be
15 mentioned several more times before this proceeding ends
16 -- under 1911, the Indian tribe has exclusive
17 jurisdiction over Indian children who are residing or
18 domiciled on the reservation.

19 The facts are not disputed that the Indian children
20 in this case never resided on the reservation. The
21 Indian mother left the reservation and had these
22 children in Harrison County Hospital, where they were
23 taken subsequent to that by the adoptive parents and
24 they were -- entered their petition for adoption.

25 QUESTION: Well, I take it you concede, however,

1 that the mother never changed her lawful domicile from
2 the reservation. She simply left it to have the
3 children.

4 MR. MILLER: That's correct, Your Honor.

5 Now --

6 QUESTION: And the court below made the issue of
7 domicile turn on a theory of abandonment, I take it.

8 MR. MILLER: That was one of the issues. Yes,
9 ma'am.

10 Justice O'Connor, that was a legal abandonment,
11 which has also been upheld in -- in a recent case, an
12 1986 case, by the Alaskan Supreme Court. And our court
13 found that there was a legal abandonment when the mother
14 traveled to Harrison County and had these children and
15 placed them with adoptive parents.

16 These adoptive parents did not go to the
17 reservation and take -- and remove these children from
18 the reservation. The mother went to great lengths to
19 see that these children were born in Harrison County and
20 that they were placed with adoptive parents.

21 This is reiterated by the reaffirmations of the
22 consent which our state court noted and I think which
23 you have copies of. Subsequent to the adoption petition
24 being filed, they reaffirmed their consent -- both
25 parents -- and also in this reaffirmation stated that

1 they specifically wanted the Holyfields, who are the
2 adoptive parents, to have these children and to adopt
3 these children. And they specifically wanted the state
4 court or the lower state court in Harrison County,
5 Mississippi, to handle this proceeding.

6 Under Section 1911, which is the first section of
7 the Act, it gives the tribal court exclusive
8 jurisdiction over children who are domiciled or residing
9 on the reservation. Number one, the children have never
10 resided on the reservation.

11 And our state court decided in their opinion the
12 definition of domicile. Now, I think it has been
13 incorrectly stated that they completely reversed their
14 position on the issue of domicile in the definition of
15 domicile. And I would like to speak to that briefly.

16 The cases being referred to are a Watson case,
17 which was decided almost ten years ago. In that
18 particular case, in the Watson case, the children,
19 minors, were removed from the county of their domicile
20 by a grandparent after their parents were killed in an
21 automobile accident in that county. They were removed
22 and a guardianship was attempted to be open in the
23 county in which the grandparent lived, and the court
24 says you have to go back to where those children and the
25 parents resided. Those children resided in the county

1 with their parents, their natural parents, up until the
2 death of their parents. So, there is no conflict there
3 with our state court opinion.

4 Now, the -- the case which followed that was the
5 case of Stubbs v. Stubbs, and in that case, our court
6 set its definition of determining domicile. In --
7 number one, they said that domicile -- when we talk
8 about domicile and residence, I think we enter into the
9 area of intent. And the court stated that the intent
10 was very important. So, as their criteria in Stubbs,
11 they said these are the things that we will use to
12 establish domicile. Number one is the physical
13 presence. Number two is the intent, and number three,
14 other facts and circumstances surrounding the particular
15 case.

16 So, when it came to this case, they said that the
17 domicile of the child was the domicile of the adoptive
18 parents, that the mother went great lengths to bring
19 these children to Harrison County and leave them with
20 adoptive parents.

21 Also, they used this other principle, Justice
22 O'Connor, which you have referred to, and that is they
23 voluntarily invoked the jurisdiction of the lower state
24 court.

25 Now, we contend under Section 1913, we have a

1 voluntary proceeding. In -- in that regard, Congress --
2 if Congress had not wanted Indian children to be adopted
3 by anyone other than Indian parents, they could have
4 stated in one sentence our intention is that Indian
5 children in no circumstances are to be adopted by
6 non-Indian parents. Congress did not --

7 QUESTION: well, Mr. Miller --

8 MR. MILLER: Yes, ma'am?

9 QUESTION: -- what Congress did say in Section 1915
10 was that in any adoptive placement of an Indian child
11 under state law, a preference shall be given, in the
12 absence of good cause to the contrary, to placement with
13 a member of the child's extended family, other members
14 of the Indian child's tribe and other Indian families.

15 Now, presumably that section is binding on even the
16 state court. Isn't that so?

17 MR. MILLER: Yes, ma'am, I would say so.

18 QUESTION: And did the state court here follow that
19 preference?

20 MR. MILLER: Justice O'Connor, they did not because
21 they looked at the part which deals with the good
22 cause. The good cause was the parents' being adamant
23 about these children be adopted by the Holyfields and
24 bringing these children to Harrison County and invoking
25 the jurisdiction of this court. They were actually

1 petitioners in this case. The adoptive parents were not
2 the only petitioners. All four, the adoptive parents
3 and the natural parents, were petitioners in this case.

4 QUESTION: Well, Mr. Miller, whether you're under
5 this -- this Indian law or not, whether you're an Indian
6 or not, it's -- it's simply not the case that if you
7 choose not to keep a child yourself, you have the right
8 to place that child where you like. I mean, it is --
9 when you decide you want the child adopted, the state
10 can say where that adoption will be, can it not?

11 MR. MILLER: Yes, sir, that's correct.

12 QUESTION: So, the fact that the mother went to
13 great trouble to have the child here and to place the
14 child in this home is -- is -- it affects one's -- one's
15 sensitivities about the case, but in fact that -- that's
16 not really relevant, is it?

17 MR. MILLER: I would certainly think that it would
18 be, Your Honor, because if we were to say to an Indian
19 woman or an Indian father that you are not able to allow
20 these children to be adopted by persons other than
21 non-Indians and you're not allowed to invoke the
22 jurisdiction of the court in the state within which you
23 live, then I think we would be denying to an Indian
24 woman the rights that all other women enjoy.

25 QUESTION: Well, but the statute clearly says that

1 with -- with respect to -- with respect to a married
2 couple on the Indian reservation, for example, even if
3 they had a child off the reservation, there is no doubt
4 where the child's domicile would be. Or would that be
5 an abandonment too? Could you -- could a married Indian
6 couple put up -- decide they will have the child off the
7 reservation and offer it to parents off the reservation
8 and say we're abandoning the child? I suppose --

9 MR. MILLER: Well, that is a good question, Justice
10 Scalia.

11 QUESTION: That would put a big hole in the
12 statute, wouldn't it?

13 MR. MILLER: I agree it would. However, I think
14 Section 1911 goes back and takes care of that problem.
15 And the statute says under Section 1911 for any child
16 who is resided or domiciled on the reservation. In this
17 case at hand, this is not the case. In the instance
18 that you're speaking of, I believe -- or maybe I'm
19 inferring it from your comments -- the children would
20 have resided at some point in their life on the
21 reservation.

22 QUESTION: No, I'm talking about the same situation
23 as we have here except that the Indian couple are
24 married, as opposed to what was the case here that they
25 were not.

1 MR. MILLER: I don't think that that would change
2 it, Your Honor.

3 QUESTION: It wouldn't change it. I agree.

4 MR. MILLER: In my opinion.

5 QUESTION: Mr. Miller, when I practiced law 100
6 years ago and got in the adoption courts now and then,
7 private placements were definitely frowned upon. Is
8 that true in Mississippi?

9 MR. MILLER: No, sir, it is not. It is not.

10 QUESTION: Isn't there substantial law to the
11 effect that on abandonment, the child takes the domicile
12 of the parent?

13 MR. MILLER: The adoptive parent or the persons
14 with whom it's --

15 QUESTION: The natural parents.

16 MR. MILLER: Oh, Your Honor, not to my knowledge.
17 This, this legal abandonment in this particular case, in
18 Alaskan case --

19 QUESTION: So, the abandonment -- whenever there's
20 an abandonment, the child takes the domicile of the
21 place where the abandonment takes place?

22 MR. MILLER: That's correct according to our court
23 and according to Alaska's Supreme Court in an '86
24 decision which is mentioned in --

25 QUESTION: The restatement is contrary, is it not?

1 MR. MILLER: well, I think that --

2 QUESTION: Restatement on Conflicts?

3 MR. MILLER: Yes, sir, I would think. However, the
4 legal abandonment is one of the exceptions to domicile,
5 or the common law definition of domicile which is the
6 domicile of the parent being -- in this case the natural
7 parent would be the domicile of the child. And that was
8 recognized by the Alaskan Supreme Court in a 1984 or
9 1986 decision, which we've submitted in our briefs.

10 And again, this was a voluntary proceeding, and I
11 wanted to touch on Section 1913.

12 Section 1913 sets forth certain criteria which the
13 court -- and I would anticipate a state court because I
14 infer from reading that that -- it mentions state
15 courts, and I would infer that there is concurrent
16 jurisdiction with both the tribal court and the state
17 court. And Congress sets forth in that Act or that
18 section of the Act, 1913, certain criteria which has to
19 be met in order for the adoption to be valid.

20 And I might also state an Alaskan case which I was
21 referring to, Section 1911, that court stated that there
22 is a distinction between 1911 and 1913 and that 1911
23 does not refer to adoptions, merely child custody
24 cases. Section 1913 is the only section that refers to
25 the adoptive placement of children. And this is the

1 section which we followed. And our state supreme court
2 stated that they felt the lower court followed the --
3 the minimum requirements required by standard law.

4 This was not an attempt by any means to usurp or to
5 bypass or to find a loophole in the Indian Child Welfare
6 Act. This was not an attempt to involuntarily take
7 Indian children from a reservation and place them in the
8 custody of non-Indians. This was a case where the
9 mother and father sought adoptive parents out. These
10 children were born in Harrison County. The mother went
11 to great efforts to see that they were and then placed
12 with these non-Indian parents.

13 We feel that this is a voluntary proceeding. We
14 feel that we have complied with Section 1913.

15 And if you notice, there is a safeguard that
16 Congress gave us in 1913, or gave Indian parents. In
17 Section 1913 --

18 QUESTION: where is Section 1913? Is it in the
19 petition for cert? Do you know where it is in the
20 briefs?

21 QUESTION: It's in the supplement to your brief.

22 MR. MILLER: It's in the supplement (inaudible) --
23 Justice Scalia.

24 QUESTION: The -- okay. Go ahead.

25 MR. MILLER: In Section 1913, there is a safeguard

1 even in the voluntary proceeding. And this safeguard is
2 that if at any stage of the proceeding the natural
3 parent objects before the final decrees have been
4 entered in this cause, the court, being the state court,
5 must immediately transfer the custody of that child back
6 to the Indian parent. So, there are even safeguards
7 within Section 1913 which is a voluntary proceeding.

8 QUESTION: They -- they don't trump the -- the
9 requirement as to which courts have jurisdiction. As I
10 understand them, they apply even when the state court
11 has proper jurisdiction. Right?

12 MR. MILLER: That's correct.

13 QUESTION: All right.

14 MR. MILLER: That's correct, Justice Scalia.

15 QUESTION: You're not asserting that -- that it --

16 MR. MILLER: No, sir. No, we're asserting that if
17 these --

18 QUESTION: You're just pointing out that there are
19 protections for the -- for the Indians --

20 MR. MILLER: For the Indian parents to prevent this
21 breakup which the Act was designed to prevent. In other
22 words, under that voluntary section, the state court can
23 transfer -- and -- and the Act says they must transfer
24 -- the children back to the Indian parent if during that
25 proceeding and prior to the entry of the final decree

1 they change their mind, for no reason.

2 And after the decree has been entered and the
3 children have been -- the adoption decree has been
4 granted, they still have up until two years after the
5 entry of decree a chance to come back and allege fraud
6 or duress. That has not been done.

7 QUESTION: What is it -- do I -- I take it you
8 submit that 1911 has nothing to do with this case?

9 MR. MILLER: Your Honor, I'll be quite truthful
10 with you. I'm not sure.

11 QUESTION: Well --

12 MR. MILLER: And the reason I say that is --

13 QUESTION: -- I thought you said that 1911 just
14 didn't even refer to adoptions and I thought you meant
15 that --

16 MR. MILLER: Yes, sir.

17 QUESTION: -- that -- it's beside the point, then,
18 in this case.

19 MR. MILLER: Well, I would have to -- I would have
20 to take that position --

21 QUESTION: Well --

22 MR. MILLER: -- because, number one, we would --

23 QUESTION: But you just -- you seemed to give it
24 away just a minute ago. You seemed to agree with
25 Justice Scalia that -- that -- these provisions in 1913

1 didn't trump the exclusive jurisdiction of the tribe.

2 MR. MILLER: Well, okay, Your Honor. I think up
3 until the time they assumed the jurisdiction. I think
4 once the jurisdiction was assumed, that the -- the --
5 the proceeding could continue through the state court.

6 QUESTION: Well, what about -- if you're right, of
7 course, then there's nothing in 1911 that would give the
8 tribe exclusive jurisdiction over the adoption of
9 children that are Indian children that are born on the
10 reservation.

11 MR. MILLER: Well, again, I was quoting the Alaskan
12 Supreme Court, but you're making a very good point. It
13 does not speak to adoption. It speaks to the child
14 custody. It speaks to both of those in Section 1913.

15 But again, I still think even under the adoption
16 proceeding under 1913, the parent has a right to change
17 his or her mind and to enter an objection. And -- and
18 according to the Act, the court must transfer it
19 immediately back to the tribe.

20 QUESTION: What do you think the rule is if a --
21 when there's an adoption proceeding in the tribal court
22 on the reservation? Can the tribal court agree to an
23 adoption by non-Indian -- by non-Indians off the
24 reservation?

25 MR. MILLER: I would think that they could, but I

1 think there is a preference list which would have to be
2 followed.

3 QUESTION: well, but that's -- that's -- the
4 preference list refers to -- refers to adoptions under
5 state law and any adoptive placement of an Indian child
6 under state law.

7 MR. MILLER: Yes, sir.

8 QUESTION: well, what about an adoption under
9 tribal law? Does this -- does this preference list
10 apply there?

11 MR. MILLER: I would think that it would, Your
12 Honor. And -- and the reason I would answer that in
13 that -- in that manner would be that because of the
14 Indian Child Welfare Act, it would -- it would be
15 required in a tribal proceeding.

16 These children are three years old. They've been
17 with these parents since they were a few days old. I
18 think someone suggested a bonding. I believe Justice
19 Kennedy, and I certainly think a bonding has taken place
20 here.

21 And I might add there was a real concern here that
22 both of these children would be placed in the same
23 home. These are twins. These are twin -- this is a
24 twin boy and girl. And there was some concern that they
25 could be placed in a home -- in the same home.

1 QUESTION: How old are the children now?

2 MR. MILLER: The children are three years old,
3 Justice O'Connor, on Jan -- on December 29 of 1988.

4 QUESTION: Mr. Miller, can I go back a minute to
5 the relationship between 1911 and 1913?

6 MR. MILLER: Yes, sir.

7 QUESTION: Nineteen eleven relates to child custody
8 proceedings.

9 MR. MILLER: Yes, sir.

10 QUESTION: And was one of the arguments you make
11 that this is not a child custody proceeding? The child
12 custody proceeding is generally ancillary to a divorce
13 or something of that kind?

14 MR. MILLER: Ancillary to a divorce and probably to
15 an involuntary termination of parental rights, which
16 Section 1912 is devoted to.

17 QUESTION: And that's not -- this is not
18 involuntary. This, of course, is a voluntary --

19 MR. MILLER: Yes, sir, that's correct.

20 QUESTION: So, you're -- what you're saying is that
21 1913 is the governing statute in this case --

22 MR. MILLER: Yes, sir.

23 QUESTION: -- which is quite a different theory
24 than the Mississippi court.

25 And -- and 1913 by its terms really assures that

1 there will state -- be state court jurisdiction of some
2 of these cases, doesn't it?

3 MR. MILLER: That's correct, Your Honor.

4 QUESTION: So that if it's a -- if it's an adoption
5 proceeding, it cannot -- you cannot read 1911 as having
6 exclusive jurisdiction -- the tribe having exclusive
7 jurisdiction of all cases or else you'd have no room for
8 1913 to operate.

9 MR. MILLER: Well, I think there is a little
10 confusion there. I think there is a little confusion.
11 In the Alaskan --

12 QUESTION: well, 1911 just applied to -- to
13 children that are -- that are domiciled on the
14 reservation.

15 MR. MILLER: Yes, sir, or residing. That's
16 correct, sir.

17 QUESTION: well, that isn't correct, is it? Under
18 Subsection B it says that an Indian child not domiciled
19 or residing within the reservation of the tribe, that
20 the state court will transfer the proceeding to the
21 jurisdiction of the tribal court on request of the
22 parent or the tribe.

23 MR. MILLER: That's correct. And it further says,
24 Justice O'Connor -- if you continue, it says absent
25 objection by either parent. So, if the -- If the

1 state --

2 QUESTION: Your position here is the parents have
3 objected in effect to that.

4 MR. MILLER: Well, they specifically stated that in
5 their reaffirmations of consent. They said they
6 specifically object to the transfer of the matter to the
7 tribal court.

8 QUESTION: Yes, but it does mean that Section 1911
9 applies in state court proceedings --

10 MR. MILLER: Yes, ma'am.

11 QUESTION: -- to children not domiciled on the
12 reservation.

13 MR. MILLER: Yes, ma'am. That's correct.

14 QUESTION: Yes, but only in state court child
15 custody proceedings, not necessarily adoption
16 proceedings.

17 MR. MILLER: Well, there again, the Alaskan Supreme
18 Court in an '84/'86 decision drew this distinction.
19 I'll be truthful with you, Your Honor. I don't know. I
20 guess we --

21 QUESTION: Well, I suppose that's what we're here
22 to decide.

23 MR. MILLER: Yes.

24 QUESTION: It's a federal statute, isn't it?

25 MR. MILLER: But I was not sure we were here to

1 decide on that issue. I think a child custody case and
2 an adoption proceeding can -- are very similar.

3 QUESTION: Yes, they're very similar. But 1913, as
4 I read it, certainly contemplates that there would be
5 some adoption proceedings over which a state court would
6 have jurisdiction.

7 MR. MILLER: Yes, sir.

8 QUESTION: Unless one reads 1913 as applying only
9 to Indians who don't live on reservations.

10 MR. MILLER: Yes, sir.

11 QUESTION: And I don't think that's a natural
12 reading of that section.

13 MR. MILLER: No, sir. I don't either.

14 QUESTION: Now, wait a minute. Does -- does 1913
15 say adoption? Does it use the term "adoption"? I don't
16 think it does.

17 MR. MILLER: Yes, sir, it does, Your Honor.

18 QUESTION: Where? It says termination of parental
19 rights -- oh, it does say "or adoptive placement of." I
20 see.

21 MR. MILLER: Yes, sir.

22 QUESTION: Whereas 1911 does use termination of
23 parental rights but not adoptive placement, just foster
24 care placement.

25 MR. MILLER: That's why we proceeded, Your Honor --

1 QUESTION: It's a mess.

2 MR. MILLER: -- and we would -- we would suggest to
3 you that we proceeded under Section 1913.

4 QUESTION: Section 1903 is the definitional
5 section, and it says child custody proceeding, using
6 that term in quotes, shall mean and include -- down in
7 the Roman numeral -- adoptive placement which shall mean
8 the permanent placement of an Indian child for adoption
9 including any action resulting in a final decree of
10 adoption.

11 MR. MILLER: Yes, sir. And I mentioned --

12 QUESTION: (Inaudible).

13 MR. MILLER: Yes, sir. And that was a very good
14 question by Justice Stevens. And again, I -- I was a
15 little confused. I should have been better prepared,
16 Your Honor. I apologize.

17 Again, this was a case in which non-Indian parents
18 did not go on to a reservation and remove these
19 children. It was a case where the Indian father and
20 Indian mother came to Harrison County and went to great
21 efforts to see that these children were adopted by the
22 Holyfields.

23 And we again would -- would suggest that this was a
24 voluntary proceeding. They proceeded under Section
25 1913. They followed the guidelines. As the supreme

1 court of our state said to the lower court, they said
2 they have followed the minimum federal standards.

3 And we feel at this time these children have been
4 with the parents for three years. We feel like we've
5 complied with the law. We do not attempt -- the parents
6 did not attempt to usurp this Act or to get around this
7 Act. But we do feel that Congress, when it enacted it,
8 certainly conceived and thought that there would be
9 instances where these children would be adopted through
10 our state courts. And this was one of those cases.

11 And we feel that we're not in conflict and this was
12 a -- we feel that our state law and our -- our Act, the
13 ICWA, is not in conflict with each other.

14 And we also feel like that -- that the tribe lacks
15 standing.

16 The one person -- the parents -- the only persons
17 we feel that would be adversely affected by this Act
18 would be the natural parents themselves.

19 And these children are eligible for membership at
20 this time because they are full-blood Choctaw Indians.
21 That -- that does not change or this case would not
22 change that. And they will be eligible for membership
23 for the rest of their lives. At any time they can
24 receive full membership in this Choctaw tribe. And the
25 adoptive parents would certainly not deny that.

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I'm finished unless you have further questions.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Miller.

The case is submitted.

(Whereupon, at 11:46 o'clock a.m., the case in the
above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

NO. 87-980 - MISSISSIPPI BAND OF CHOCTAW INDIANS, Appellant V. ORREY

CURTISS HOLYFIELD, ET UX., J.B., NATURAL MOTHER AND W.J.,
NATURAL FATHER

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY alan friedman

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