THANKS: need your ideas
  – Have talked endlessly, still losing – see stats 2004 to date
  – Am I wrong? If right how win?

MY BASIC POSITION:

1. Child Human Rights:
   – Child should count as Having Human Rights; important to emphasize BIC
     bc always risk Adult Rts will trump
   – Child Human Rights at core: Rt to Life & Nurturing Parenting/Family core
   – BIC should trump State Sovereignty & Equal or Trump Parent Rights
   – Leads to IA a positive, need to facilitate not prevent, if only place for
     homes/families

2. Larger Community Interests:
   – IA Consistent or Inconsistent?
   – This matters, though if unclear, then clear benefit to ID’d Kids shld trump
   – IA more likely Consistent in my view

BACKGROUND FOR TRA. ICWA & IA
Strong tradition of treating kids as “belonging” to where came from:
- Parent
- & Group: group eg: race, religion, indian tribe, nation;

“Belong” in 2 senses (BIC and Group Ownership)

- Parallel thinking/politics/issues, but

- Sigly different treatment by law as of today:
  - MEPA has banned same-race matching; ASFA reduces Birth Heritage emphsis
  - Yet Birth & Nat’l Heritage emphasis very alive in ICWA & IA

- Which the right direction for future? Which the likely direction – up in air

TRA & MEPA:
- No TRA to
- Some to Rigid Race-Matching to Recent Rejection of Tradition:
- MEPA based on BIC arguments (delays/denial of adoption harmful, TRA not a problem and way better than delay/denial), and “Better World” arguments

ASFA: Also counter to the Tradition: Focus more on BIC and Rt to Nurt Home; 15/22 mandate to move out of Fcare (compare to Institutions & IA)

ICWA:

Passed as result of same 1972 push as with NABSW

Very powerful law: give essence

Cong claims: Tribes should have ownership right; this serves BIC

But clear questions whether serves/injures BIC
  - Enough good Indian homes? Where are the kids & how doing?
– Heightened Standards for Removal (Cl & Conv), TPR (Bey Reas Doubt)

Helpful to larger Indian Community?? Why does Congress address these Macro issues and not others?

INTERNATIONAL ADOPTION

Bad History stories prevalent in Adoption:

– Some true: Fall 09 story re British Home Children shipped to Australia, Canada and other Empire countries where abused in institutions

– Some characterized as bad: Haiti’s recent story: The Americans arrested bc missing papers, not all orphans

– Some entirely untrue: Organ Harvesting: referred to by Haiti PM; question raised by Commissioner at our Hearing

Background Facts & Law: Overall: IA at pre-MEPA I stage, pre-Civil Rights Mvmt stage: only a last resort, very strong in-country prefs, often Denial of IA by Countries altogether

– Facts:
  – Chart Figures: Down last 5 years: 2004 peak, projected 2010 less than half (from over 40,000 to less than 20,000 worldwide, in US over 20,000 to 10,000)
  – Infants no longer placed
  – Countries that had opened close down successively

– Law:
  – General Law: Countries own kids and can do what want; Child Rights Conventions & Hague Convention on ICA endorse this law

  – CRC mixed bag re messages but used to close down as in Romania & UNICEF, used to promote in-country hierarchy w IA last resort; language favors in-country Fcare & other “aprop” solutions over IA;
but see imaginative interp by courts of South Africa, Malawi, India (Gl Pol IA article)

- e.g. CRC Comm Rts Child HIV/AIDS Orphans Report 10-11 IA not even last resort: kinship then fcare then INSTITUTIONS, no mention IA; UNICEF report on same topic same listing; also recent Comm Rts Child Hum Rts Committee proposed UN Guidelines speaks favorably only of in-country solutions

- Hague seems step forward bc seems to favor IA over Fcare but (1) ignored by UNICEF et al, and (2)actual Negative: used to close down Central/South America

- US law somewhat more pro-IA over years: tax credit; auto citizenship; elim in Hague Adoptions of one-parent only req; but not especially relevant to larger picture; US joins in close-down of other countries often as in Guat

Parallels but also differences from TRA

- Desperate poverty etc leads to surrender/abandonment

- Kids not in Bio Homes are in Institutions not Fcare

Madonna IA cases (Gl Pol): Symptomatic of much of debate & largely negative CRC role
- Rich take kids of poor
- Rich may also contribute to poor country & other kids
- Wealth may get you around laws; but laws may be anti-child as Malawi Residence requirement
- Human/Child Rights Orgs Position: 67 piled on in Case 1; Save the Children & Others in Case 2
- Case law really interesting:
  - interpret Residence Req in light of BIC;
  - CRC & other Child Human Rights documents make BIC first principle; The “Subsidiarity principle must be subsidiary to BIC principle”
- Madonna a citizen of world: recognize value of her S to Malawi kids

MY RECENT EFFORTS: FOCUS ON HUMAN RIGHTS REFRAMING: what else should I do?

Action Agenda:

2. Media: Opeds
3. IA R&R:

signed by over 130 individuals & 6 orgs in child human rights

- focuses on Key Issues in Debate
- IA on table as one solution for kids, Consistent with other solutions for other kids
- Hierarchy shld be: Adoption over fcare/instr
- In-Country Pref if exists should not require Delay: Holding Periods bad
- Affirm ID of Kids in Need & Freeing Up for Adoption
- Address Abuses through Enforcing Laws and NOT through
  - Moratoria
  - Close down of Private

Note: Controversial: ABA battle over all of specifics; watered down ABA Resolution on IA

4. Recent (Nov 6, 2009) Hearing Inter-Amer Commission Human Rights: Guat, Honduras, Peru: less than 1% than at peak IA years
- Cutting edge Early Brain Development science & social science
- Note Questions Commissioners asked: Organ Harvesting
SOME KEY ISSUES

1. Adoption as Last Resort Only? Limit if possible so focus on Other Solutions more helpful to larger community? OR Is IA Consistent with other strategies, helpful to??

– Related Question: How understand $ flooding into poor countries phenom? Good/bad?
  – E.g.: Madonna; China $3-5000
  – Compare Remittances: Haiti article showing Haitians in U.S. send 30% of Haiti’s GrossDomesticProduct, $1.9 or 1.5 billion (NYT 1/7/10); yet no complaints re Corruption, or breakup of families, or denial of cultural heritage for the emigrants

2. Hierarchy Issues: Preference at all? How strong the Preference (given that law insists on pref for in-country adoption – Hague)?
  – In-Country Foster Care over IA? Small group homes? Uganda 2-room shack for 12 kids a good as vs IA? UNICEF & CRC
  – Holding Periods?

3. Abuse Issues: What counts as Abuse? How to Address/Respond?: Moratorium, Close Private?
  – Haiti as example: missing paperwork, maybe some kids not orphans, maybe some relatives available; now many calls for Moratorium, now jailed perpetrators even though apparent good faith
  – Why this response from UNICEF etc, from Haiti? UNICEF loves the excuse; Haiti – pride.. Easy outlet in absence of others: see NYT Quotes; NB only prosecutions contemplated post-Earthquake, & why not ACTUAL traffickers, slavers?

4. Affirmative Reg for IA: ID kids in need; facilitate/coordinate/expedite; OR keep the 96-97% who allegedly aren’t “full orphans” in institution as UNICEF proposes

5. Poor Birth Mother Human Rights: Miami Herald 2/2-10:”Desperate Parents Plea: Please take our Children”: Quotes
6. What is Motivating Opposition to IA: Main Opposition comes from Human Rts orgs and also Sending Country factions/governments: motivated by BIC of Unparented Kids? by larger Community Interests? Or??

7. What is the right Child Human Rights position?