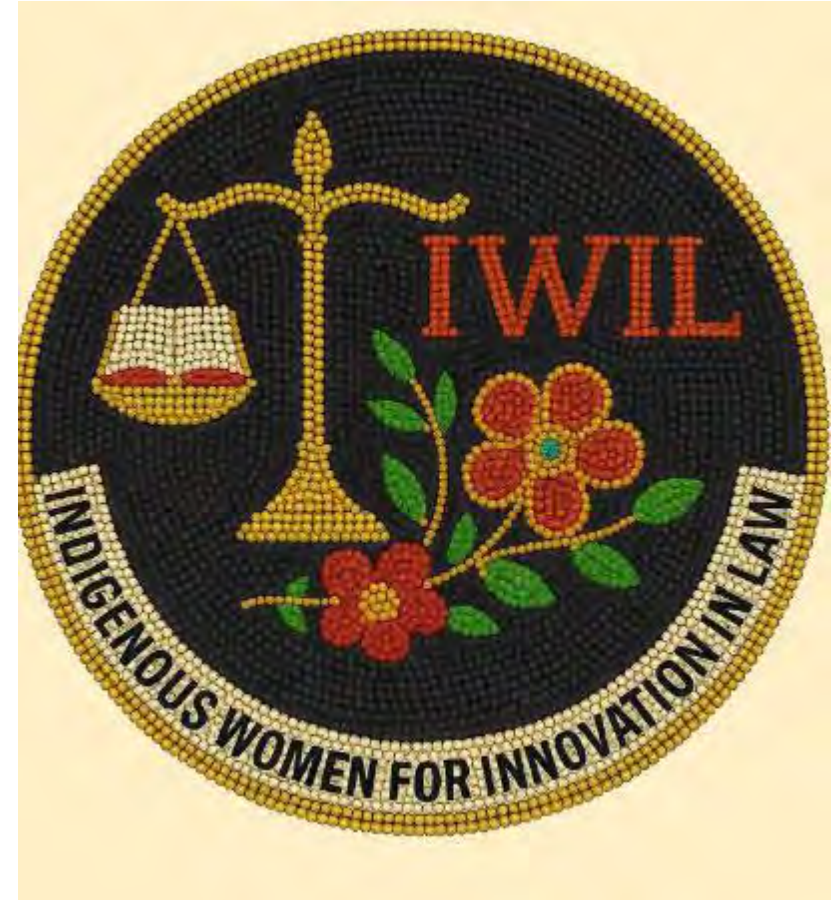


THE TREATY RIGHT TO HEALTH

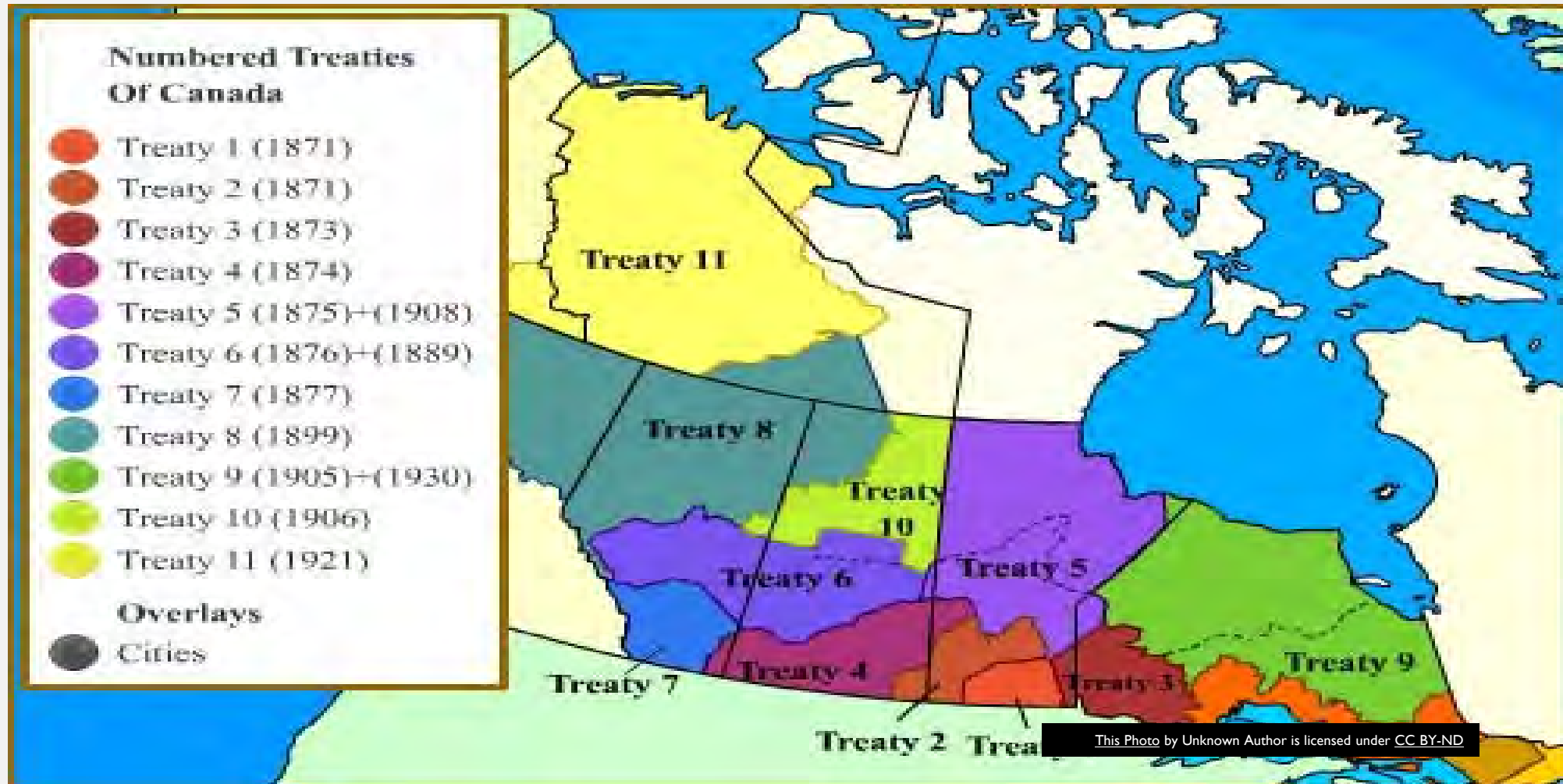
Presented by Lori Johnstone-Clarke, Barrister and Solicitor.

Lori is Cree, a direct descendant of Chief Mistawasis, and registered as a status Indian with Mistawasis Neheyiwak Nation.

Lori holds two degrees from the University of Saskatchewan, BA (94) and LLB. (01) and has been practicing Law since 2002.



TREATY 6 – THE TREATY RIGHT TO HEALTH/MEDICINE CHEST



~ Treaty 6 ~ August 23, 1876



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- Treaty Six, signed on August 23, 1876 (September 9, 1876), between Her Majesty the Queen of Great Britain and the Plains and Wood Cree Indians at Fort Carlton and Fort Pitt and contains the following text:
- “That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent” and, additionally, Treaty Six contains a clause dealing with pestilence or famine:
- “That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.”



TREATY 6 – SIGNATORY CHIEFS

- Picture courtesy of the SK Archives – government photo taken October 16, 1886.
- Chief Ahtahkakoop (Star Blanket) seated on the left and Chief Mistawasis (Big Child) seated at right.
- Chief Kahkiwistahaw (Flying in a Circle) seated in center.
- **on back of photo refers to Red Indians of the Plains written by Reverend John Hines.*
- **picture taken from the book Mistawasis – A Glance Back at History Through Our Eyes, Chief Mistawasis School 2019-2020*

TREATY 6 MEDALLION



WHAT IS A
TREATY
~
THE TREATY
RIGHT TO
HEALTH

- Treaties are sacred covenants that were sanctified by prayers and ceremonies. First Nations law guided the leaders in their negotiations of the solemn agreements. The Treaties were carefully thought out by First Nation leaders with a lot of consideration given to securing a good life for future generations.
- Treaty 6 specifically includes the medicine chest clause as First Nations were fully aware of the new diseases and understood the importance of overall health. Treaty Commissioner Alexander Morris reports that the Indian people requested “provisions for the poor, unfortunate, blind and the lame” and “a free supply of medicines”.
- The oral assurances and medical care provided during the Treaty negotiations were important to First Nations and form the foundation of their understanding as it relates to the Treaty Right to Health.

WHAT IS
THE TREATY
RIGHT TO
HEALTH
~~
LAW AND
GOVERNMENT

- Constitutionally, under the Constitution Act, 1867, there exists a division of powers between the Federal Government and the Provincial Governments.
- The Federal Government is responsible for matters set out under s. 91 of the Act and the Provinces are responsible for matters set out under s. 92.
- **First Nations or Indians and lands reserved for Indians are specifically mentioned to be under Federal jurisdiction pursuant to s. 91(24)** which states: “91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,... 24.Indians, and Lands reserved for the Indians.”

THE TREATY RIGHT TO HEALTH ~ S. 35 OF THE CONSTITUTION ACT

The recognition of a Treaty Right to Health forces the Federal Government to acknowledge that the Treaty Right to Health is constitutionally protected by s. 35 of the Constitution Act, 1982, which states:

- “PART II RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights

- 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of “aboriginal peoples of Canada”

- (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

- (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

[Emphasis Added]



INHERENT RIGHT TO HEALTH - MEDICINE CHEST CLAUSE

First Nations possess constitutionally protected, Inherent and Treaty Rights to Health

Inherent Rights to health and health care are granted by the Creator. First Nations are born with Inherent Rights and inherit them from generation to generation based on traditions, customs and practices.

The inherent right to health includes access to quality care, the right to control your health and body,

Inherent Rights include a traditional health system of: Medicine People; ceremonies and practices for healing and prevention; and medicines from earth, minerals, animals, plants and water, traditional lands and resources, which are recognized and affirmed by the Constitution of Canada, common law, and international law.

TREATY RIGHT TO HEALTH ~ MEDICINE CHEST COURT CASE

- **Article from Prince Albert Daily Herald Wednesday. September 12. 1934**
- **(...) Medicine Promised**
- Aged Chief George Dreaver, 78- year-old head of the Mistawasis Indians, testified in the Exchequer Court hearing of the band's petition of right Tuesday afternoon that in speeches made at the signing of the treaty in 1876, commissioners of Queen Victoria promised that medicine would be supplied free to the Indians on their reserve located west of here.
- In 1876, he was present at Carleton at the signing of the treaty after parleys in August and September. His grandfather, Chief Mistawasis, was one of the signers as was Chief Poundmaker, another relative. He heard what Governor Morris said in a speech to the effect that free medicine would be supplied to the treaty Indians. In the treaty it stated a medicine chest was to be kept in the home of every agent for the use of the Indians. The Indians said then: "The white man has come to stay with us. We have to change our life a little and we want to use the white man's medicine." It was understood by Chief Dreaver that the Indians would not have to pay for their medicine.

TREATY RIGHT TO HEALTH~ MEDICINE CHEST COURT DECISION

- **Article from Prince Albert Daily Herald Thursday, April, 1935**
- **Headline from front page "ORDERED TO PAY \$18,309 TO MISTAWASIS INDIANS Gov't Loses Court Action"**
- Chief George Dreaver launched the action along with councillors of the Mistawasis band, testified at the trial when he wore medals struck upon the signing of the treaty in 1876. The medals bore a picture of the sun and river, a symbol that as long as the sun shone and the river flowed the terms of the treaty would be kept.
- Chief Dreaver is a grandson of the first Chief Mistawasis.



HEALTH CARE IN ENGLAND 1800'S

- Overall Context

- The medical landscape was transitioning from unregulated practice toward scientific and structured professions.
- Diseases were prevalent in rapidly urbanizing cities, prompting early public health initiatives.
- Hospitals were becoming educational centers, while dentistry began moving from a trade into a recognized medical specialty.
- Over seventy special hospitals established between 1800–1860.
- In sum, around 1840, England had growing numbers of hospitals, emerging dental professionalism, and a medical profession increasingly structured by education and public health awareness, though significant gaps in training, access, and regulation remained. (The Victorian Web and Wikipedia)

HEALTH CARE IN 19TH CENTURY

Early 19th-Century Hospital Conditions:

- hospitals were primarily charitable institutions serving the poor who could not afford private care.
- Facilities were often overcrowded, unsanitary, and unsafe, leading to high mortality from infections rather than the illnesses being treated.

For example:

Patients were admitted only with recommendations from doctors or local authorities.

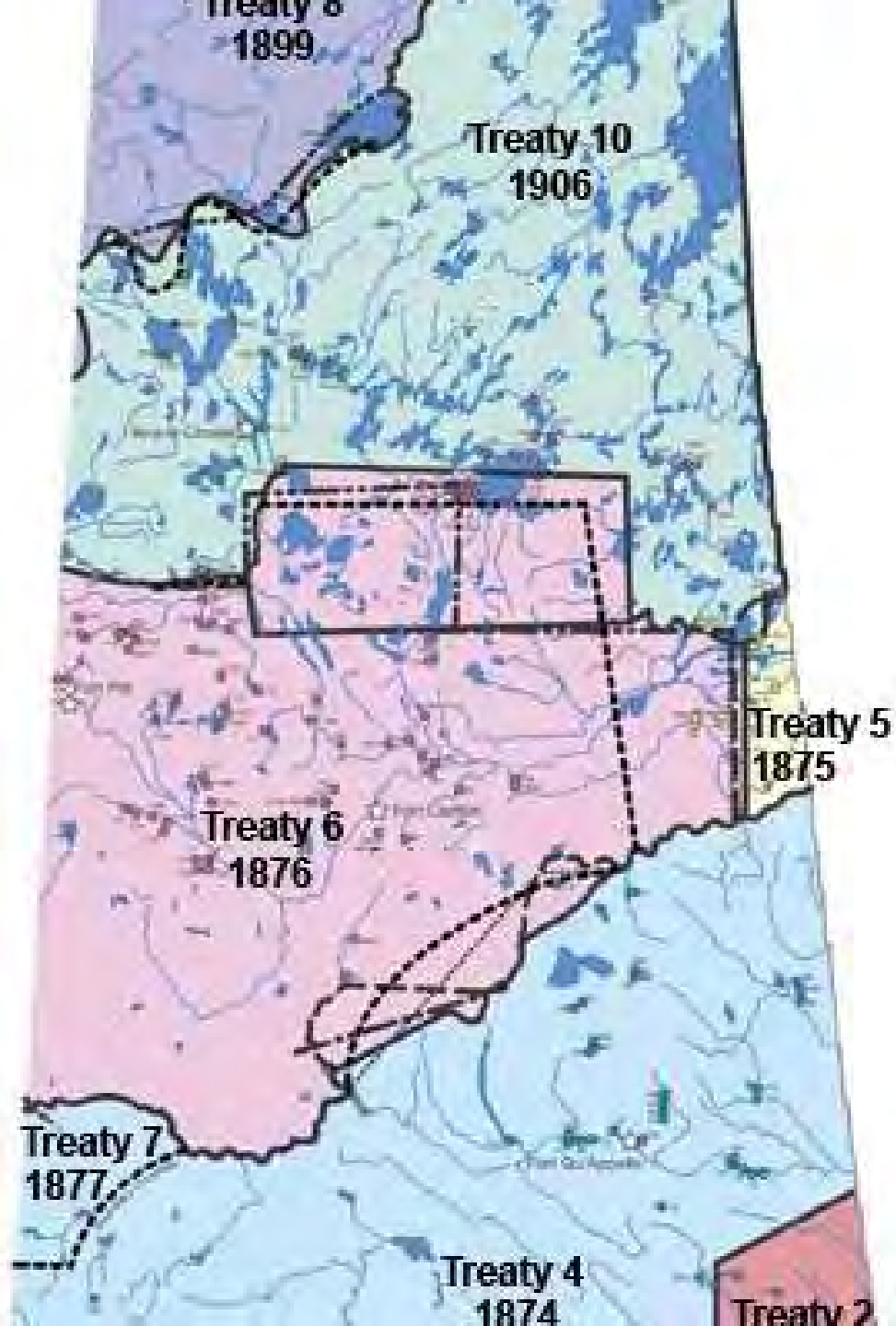
Nursing staff were mostly untrained.

Surgery was risky due to the absence of anesthesia and antiseptic methods.

Wealthy patients were typically treated at home rather than in hospitals

(The Victorian Web and Wikipedia)





WHAT IS A TREATY RIGHT TO HEALTH IN SASKATCHEWAN

- The courts have considered the meaning and interpretation of the “medicine chest” clause.
- Historically, in Saskatchewan, the courts found a broad interpretation of the clause for the provisions of medicine, drugs or medical supplies required by the First Nation, but in 1966, the Saskatchewan court of Appeal, interpreted the clause essentially on a literal and restricted basis and subsequently again in 1970, to mean that First Nation persons were not entitled to receive all medical services including hospital care, free of charge.

MMIWG ~ CALLS TO JUSTICE

- Testimonies to the National Inquiry included women's descriptions of their "graduations " from foster care, to youth detention, to provincial institutions, to federal institutions.
- Indigenous women's respective experiences of trauma, precarity , and abuse resulting from the colonial project
- Stats show that Indigenous Women in Canada have:
 - Insecure, expensive and unsafe housing
 - A higher unemployment rate, and are more likely to work part time
 - Lower levels of educational attainment
 - The worst health outcomes of any group



CALLS FOR JUSTICE FOR ALL GOVERNMENTS: HEALTH AND WELLNESS

MOVING FORWARD TOWARDS UNDERSTANDING

- Understanding the central roles Indigenous women played in traditional societies that focused on harmony and balance
- Understanding of the impacts of racism, sexism and colonialism, including the *Indian Act* and residential schools, upon Indigenous women, their communities and cultures
- Understanding the importance of Indigenous cultures in the healing journey to decolonize identity and build resilience
- Understanding that individual resilience and community resilience are intertwined in a mutually dependent relationship

CALLS FOR JUSTICE FOR ALL GOVERNMENTS: HEALTH AND WELLNESS

~

WHAT DOES HEALTH INCLUDE

- Rehabilitation must be linked to community reintegration supports:
 - Elders, community supports, mental health supports, cultural continuity.
- Support Resilience
 - must use trauma, gender and culturally-informed lenses
 - move away from lateral violence

Indigenous Peoples have diverse notions of resilience which include culturally distinctive concepts of the person and community and the environment, the importance of collective history, the Indigenous languages and traditions, as well as individual and collective perspectives.

CALLS FOR JUSTICE FOR ALL GOVERNMENTS: HEALTH AND WELLNESS

WHAT DO WOMEN NEED

- To end the cycle of violence, Indigenous women who experience violence need holistic supports, including counselling, education, and access to employment.
 - Indigenous women's community reintegration depends in part on healthy and supportive relationships with their families, their children and their communities.
 - Need to engage community in developing a plan (It takes a Village)
 - Wrap-around, holistic culturally-responsive support services
 - Cultural and family connectedness (strong social bonds)
 - Understanding of intergenerational trauma; Decolonizing identity
 - Traditional healing; traditional spirituality
 - Knowledgeable and supportive agents
 - Cultural practices provide the foundation for resilience and natural protective factors

made and concluded near Orleans, on the banks of the Bay of August, and on the twenty-sixth of said month, respectively, and near Fort Pitt on the twenty-fifth of September, in the year 1763, and the said document (which is hereunto annexed) between HER MOST GRACIOUS MAJESTY THE QUEEN of Great Britain and Ireland, by Her Commissioners, the Honorable ALEXANDER MURDOCH, Lieutenant Governor of the Province of New Brunswick, and the North-West Territories, and the Honorable JAMES MCKAY, and the Honorable WILLIAM JOSEPH of the other Tribes of Indians, inhabitants of the country, within the limits hereafter defined and described, by their Chiefs, chiefs and named or hereafter mentioned, of the other party.

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1. The following information was obtained from a review of the records of the Federal Bureau of Investigation, Department of Justice, and the Central Intelligence Agency, Office of the Inspector General, regarding the activities of the Central Intelligence Agency, Office of the Inspector General, in the period from 1960 to 1962:

1. Full Name (Last, first, middle) 2. Address (Street, city, state, zip) 3. Phone (Area code, number) 4. Age (Years) 5. Sex (Male, Female) 6. Marital Status (Single, Married, Divorced, Widowed) 7. Occupation (Job title) 8. Education (High school, College, Graduate) 9. Religion (None, Christian, Jewish, Muslim, Hindu, Buddhist, Other) 10. Political Party (None, Democrat, Republican, Independent, Other) 11. Interests (Hobbies, sports, etc.) 12. References (Names and addresses of people who can vouch for you)	1. Full Name (Last, first, middle) 2. Address (Street, city, state, zip) 3. Phone (Area code, number) 4. Age (Years) 5. Sex (Male, Female) 6. Marital Status (Single, Married, Divorced, Widowed) 7. Occupation (Job title) 8. Education (High school, College, Graduate) 9. Religion (None, Christian, Jewish, Muslim, Hindu, Buddhist, Other) 10. Political Party (None, Democrat, Republican, Independent, Other) 11. Interests (Hobbies, sports, etc.) 12. References (Names and addresses of people who can vouch for you)	1. Full Name (Last, first, middle) 2. Address (Street, city, state, zip) 3. Phone (Area code, number) 4. Age (Years) 5. Sex (Male, Female) 6. Marital Status (Single, Married, Divorced, Widowed) 7. Occupation (Job title) 8. Education (High school, College, Graduate) 9. Religion (None, Christian, Jewish, Muslim, Hindu, Buddhist, Other) 10. Political Party (None, Democrat, Republican, Independent, Other) 11. Interests (Hobbies, sports, etc.) 12. References (Names and addresses of people who can vouch for you)	1. Full Name (Last, first, middle) 2. Address (Street, city, state, zip) 3. Phone (Area code, number) 4. Age (Years) 5. Sex (Male, Female) 6. Marital Status (Single, Married, Divorced, Widowed) 7. Occupation (Job title) 8. Education (High school, College, Graduate) 9. Religion (None, Christian, Jewish, Muslim, Hindu, Buddhist, Other) 10. Political Party (None, Democrat, Republican, Independent, Other) 11. Interests (Hobbies, sports, etc.) 12. References (Names and addresses of people who can vouch for you)
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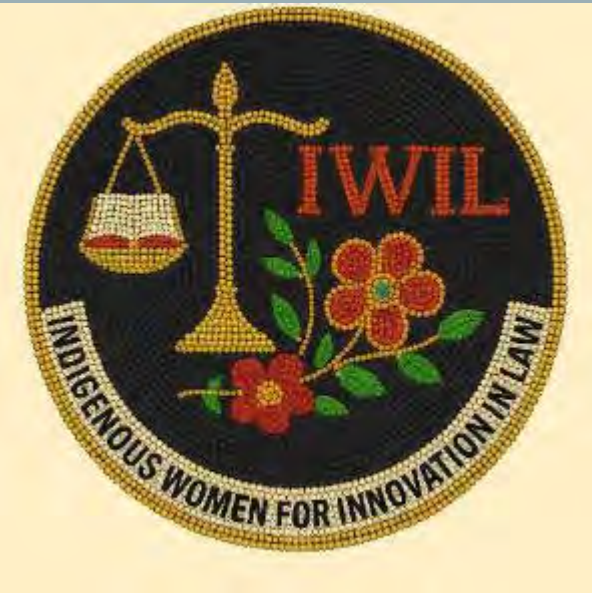
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Conclusions and Dis

CONCLUSION / DISCUSSION



Q & A

CONCLUSION / DISCUSSION